TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1908

No. 650.

DECATUR MORGAN AND JENNIE G. MORGAN, PLAINTIFFS IN ERROR,

vs.

CHARLES H. ADAMS, FRANK W. ADAMS, AND CARRIE E. ADAMS

IN ERROR TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

FILED MARCH 24, 1909.

(24,645)

(20,645)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1907.

No. 267.

DECATUR MORGAN AND JENNIE G. MORGAN, PLAINTIFFS IN ERROR,

vs.

CHARLES H. ADAMS, FRANK W. ADAMS, AND CARRIE M. ADAMS.

IN ERROR TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

INDEX.

	Page.
Caption	1
Transcript from the supreme court of the District of Columbia	1
Will of Julia M. Adams	1
Affidavit of Howard C. Riley	2
Petition for letters testamentary	2
Affidavit of Julia Hicks	3
Petition and caveat	4
Answer of Decatur Morgan	6
Answer of Jennie G. Morgan	7
Motion for framing issues	8
Order fixing issues and setting cause for trial	9
Inventory	9
Order setting case for trial April 16, 1906	12
Petition and caveat of Frank W. Adams	13
Order setting date for trial	14
Minute entries, May 7, 1906	15
Minute entries, May 14, 1906	16
Notice of appeal to Court of Appeals	17
Order fixing amount of appeal bond	17

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MARCH 18, 1908.

Page.

Citation on appeal 17
Memorandum: Appeal bond approved 18
Notice for settling bill of exceptions 18
Order extending time for filing transcript 19
Order extending time for filing transcript 19
Order extending time for making up transcript 19
Bill of exceptions 20
Will of Julia M. Adams 20
Testimony of Charles H. Adams 21
R. E. Doan 24
Mrs. Maria M. Doan 25
Dr. James T. Saffold 26
Mrs. Albenia Van Wickle 27
James A. Black 28
John Joy Edson 28
Mrs. M. G. Carmick 29
H. J. Gross 30
C. B. Rheem 31
Exhibit B—Letter, Julia M. Adams to Mr. Rheem 31
Testimony of C. B. Rheem (continued) 32
Statement of amount paid by checks and drafts 32
Testimony of C. B. Rheem (continued) 33
Henry J. Gross (recalled) 34
C. B. Rheem (continued) 34
G. W. F. Swartzell 35
A. W. McCreary 36
Mrs. E. A. McCreary 36
Mrs. E. S. Scott 37
Miss Mary E. Mann 37
Mrs. M. C. Sewell 38
Ida M. Pierson 39
Mrs. S. R. Burche 41
Mrs. Seraphine Gatti 42
Miss Fannie Gilliss 42
Miss S. V. Heller 43
Miss E. A. Heller 45
Thomas N. Eastwood 45
Mrs. M. E. Duke 47
J. H. Lichliter 47
R. H. McKim, D. D. 51
J. D. La Mothe, D. D. 51
C. O. Pierson 52
Percy H. Russell 53
Miss Franciade Wagner 54
R. M. Ellyson, M. D. 55
W. H. Atkinson, M. D. 56
Dr. R. H. McKim (of his own motion) 60
Howard C. Riley 60
Mrs. W. H. Woodcock (née Hicks) 61
Decatur Morgan 62
Dr. R. H. McKim 63
Decatur Morgan (resumed) 64
Jennie G. Morgan 68

Page.

Testimony of W. A. McKenney 83
Mrs. Maria M. Doan 83
Dr. G. S. Saffold 84
Dr. J. P. Saffold 84
Mrs. Laura Patterson 84
Burnetta B. Lehman 85
G. W. F. Swartzell 85
C. B. Rheem 85
Prayers of caveators 86
Prayers of caveatees 87
Charge of the court 89
Caveators' exhibits 93
Exhibit Saffold No. 1—Power of attorney to J. P. Saffold 93
Exhibit K—Letter, Jennie G. Morgan to Mr. Adams, June 21, 1905. 94
H—Letter, Mrs. Decatur Morgan to C. H. Adams, December 27, 1904 95
I—Letter, Mrs. Decatur Morgan to C. H. Adams, July 14, 1904 95
E—Letter of Mrs. Morgan, June 20 96
L—Letter of Mrs. Morgan 97
M—Letter, Julia M. Adams to Mr. Rheem, October 10, 1904 97
A—Power of attorney to Jennie G. Morgan 97
R—As to headstone for Julia M. Adams 98
G—As to care of Julia M. Adams in case of her sickness or death 98
Order for transcript of record 99
Certificate of register of wills, clerk of probate court 100
Addition to record per stipulation of counsel 101
Stipulation 101
Judgment 101
Certificate of deputy register of wills 102
Minute entries of argument 103
Stipulation to correct record 103
Opinion 104
Judgment 110
Minute entry of application for writ of error 110
Opinion on application for writ of error 110
Order granting writ of error 111
Writ of error 111
Bond on writ of error 112
Citation and service 113
Clerk's certificate 113

In the Court of Appeals of the District of Columbia.

No. 1740.

DECATUR MORGAN and JENNIE G. MORGAN, Appellants,
vs.
CHARLES H. ADAMS, FRANK W. ADAMS, and CARRIE M. ADAMS.

1 *Last Will and Testament of Julia M. Adams.*

I, Julia M. Adams, of the City of Washington, District of Columbia, formerly a resident of Danbury, State of Connecticut, do make and declare this my last Will and Testament, hereby revoking any and all former Wills by me at any time heretofore made.

Item 1. I first direct the payment of my just debts, if any, owing at my decease, and my proper funeral expenses. It is my desire that my remains be buried in Rock Creek Cemetery in a lot that I own jointly with my friends Jennie G. Morgan and her husband Decatur Morgan.

Item 2. I next direct that two hundred dollars ($200.00) be paid to Jennie G. Morgan for the purpose of buying and selecting a stone properly inscribed, to be erected to mark my last resting place.

Item 3. I give and bequeath to my friend Jennie G. Morgan, my gold watch, all my other jewelry, all my clothes, personal effects and books.

Item 4. I give and bequeath to Jennie G. Morgan the sum of three thousand dollars ($3000.00) for her kindness and care of me; and in the event of her death before mine, to her husband Decatur Morgan.

Item 5. I give and bequeath to Decatur Morgan the sum of one thousand dollars ($1000.00); and in the event of his death before mine, to his wife Jennie G. Morgan.

Item 6. I give and bequeath to Epiphany Episcopal
2 Church, of Washington, D. C., the sum of two hundred and fifty dollars ($250.00) for the Endowment Fund of the church.

Item 7. I give and bequeath to my niece, Carrie M. Adams, the sum of ten dollars ($10.00).

Item 8. I give and bequeath to my nephew, Frank M. Adams, the sum of ten dollars ($10.00).

Item 9. All the rest, residue and remainder of my estate, which consists only of personal property, I give and bequeath to my nephew Charles H. Adams, his heirs and assigns forever.

Item 10. I name and appoint Decatur Morgan, of Washington, District of Columbia, executor of this my last Will and Testament.

In witness whereof I have hereunto set my hand and seal at Washington, District of Columbia, this 11" day of February in the year of our Lord one thousand nine hundred and five.

JULIA M. ADAMS.

Signed, sealed, published and declared by the testatrix, Julia M. Adams, as and for her Last Will and Testament, in the presence of us, who at her request and in her presence, and in the presence of each other, all being present together at the same time, have hereunto subscribed our names as witnesses this 11" day of February in the year of our Lord one thousand nine hundred and five.

HOWARD C. RILEY.
JULIA HICKS.

(Endorsement: Filed Jun- 27 1905. James Tanner, Register of Wills, D. C. Clerk of Probate Court.)

3 Form No. 1.

Supreme Court of the District of Columbia, Holding a Probate Court.

DISTRICT OF COLUMBIA, *To wit:*

On this 27th day of June, A. D. 1905 personally appeared Howard C. Riley who on oath says that he does not know of any will or codicil of Julia M. Adams late of said District, deceased, other than the foregoing instrument of writing dated February 11, 1905; that he received the same from E. Hilton Jackson and that said Julia M. Adams died on or about the 23rd day of June, 1905.

HOWARD C. RILEY.

Sworn to and subscribed before me,

WM. C. TAYLOR,
Deputy Register of Wills for the District of Columbia,
Clerk of the Probate Court.

4 In the Supreme Court of the District of Columbia, Holding the Probate Court.

In re Administration of JULIA M. ADAMS, Deceased. Administration No. 13028.

The petition of Decatur Morgan respectfully shows the Court as follows:—

1. That he is a citizen of the United States and a resident of the District of Columbia.

2. That Julia M. Adams, lately a resident of the District of Columbia, departed this life, testate, on the 24" day of June, A. D.

1905, leaving a last will and testament dated the 11th day of February, A. D. 1905.

3. That the aforesaid decedent left surviving her the following heirs at law and next of kin: Charles H. Adams, nephew, of South Norwalk, Connecticut; Carrie M. Adams, of Norwalk, Connecticut, a niece; and Frank M. Adams, nephew, of Dayton, Ohio, all of whom are more than twenty-one years of age.

4. That the said decedent left no real estate, but left personalty in the nature of notes secured by real estate aggregating, approximately, seven thousand dollars; that the decedent left debts, including funeral expenses, medical attention, etc., of approximately, three hundred dollars.

5 5. That by her said last will and testament your petitioner was named executor of the estate of the decedent.

Wherefore your petitioner prays:

First. That citation issue out of this Honorable Court directed to Charles H. Adams, Carrie M. Adams and Frank M. Adams, requiring them to appear and answer the exigency of this petition.

Second. That letters testamentary upon said estate be issued to your petitioner upon his giving bond in such an amount as may be fixed by this Court conditioned upon the faithful performance of his duties as such administrator.

Third. And for such other and further relief as to the court may seem proper.

DECATUR MORGAN.

E. HILTON JACKSON,
Att'y for Petitioner.

I, Decatur Morgan, on oath depose and say that I have read the foregoing petition by me subscribed and know the contents thereof; that the statements therein made as of my own knowledge are true and those made upon information and belief I believe to be true.

DECATUR MORGAN.

Subscribed and sworn to before me this 28th day of June, A. D. 1905.

J. ARTHUR LYNHAM,
[NOTARIAL SEAL.] *Notary Public.*

(Endorsement: Petition for letters testamentary. E. Hilton Jackson, Att'y for petitioner. Filed Jun- 29 1905. James Tanner Register of Wills, D. C. Clerk of Probate Court.)

6 Form No. 2.

In the Supreme Court of the District of Columbia, Holding Probate Court.

DISTRICT OF COLUMBIA, *To wit:*

On this 20th day of July, A. D., 1905 personally appeared Julia Hicks, who on oath says that she is one of the subscribing witnesses

to the foregoing to the last will and testament of Julia M. Adams deceased, late of the District of Columbia, that the Testatrix therein named signed said will in her presence; that said Testatrix published, pronounced and declared the same to be her last will and testament; that at the time of so doing said Testatrix was, to the best of affiant's apprehension, of sound and disposing mind, and capable of executing a valid deed or contract; and that affiant's name as witness to the aforesaid will was signed in the presence and at the request of Testatrix and in the presence of Howard C. Riley the other subscribing witness, who also signed in the presence of the affiant, and in the presence and at the request of the Testatrix.

JULIA HICKS.

Sworn to and subscribed before me on the day aforesaid.

WM. C. TAYLOR,
Deputy Register of Wills for the District of Columbia,
Clerk of the Probate Court.

7 In the Supreme Court of the District of Columbia, Special Term for Probate Business.

In the Matter of the Estate of JULIA M. ADAMS, Deceased. No. 13028, Adm. Doc. —

Petition and Caveat.

Carrie M. Adams and Charles H. Adams respectfully show to the court as follows:

1. They are citizens of the United States, residents of Norwalk, in the State of Connecticut, and file this petition as heirs at law and next of kin of Julia M. Adams, deceased, as hereinafter shown.

2. The said Julia M. Adams departed this life in the City of Washington, in the District of Columbia, heretofore, to wit, on the 24th day of June, A. D. 1905, leaving her surviving, as her only heirs at law and next of kin, your petitioner Carrie M. Adams, a niece, your petitioner Charles H. Adams, a nephew, and Frank M. Adams, of Dayton, Ohio, also a nephew, all of whom are of full age.

3. Said decedent, as your petitioners are informed and believe, and therefore aver, left no real estate, but died possessed of certain first mortgage real estate notes, aggregating about $7200, and also left a paper writing bearing date, to wit, the 11th day of February, A. D. 1905, and purporting to be her last will and testament, which paper writing heretofore, to wit, on or about the 29th day
8 of June, A. D. 1905, was filed herein, and application made for its probate as the last will and testament of the said testatrix, by one Decatur Morgan, who is named therein as executor.

4. Your petitioners do hereby contest the validity of the said paper writing, dated February 11th, 1905, and so as aforesaid offered for probate as the last will and testament of the said Julia M. Adams, and, as the grounds thereof, allege as follows:

(*a.*) That the said Julia M. Adams was not, at the time of the

execution of the said paper writing, of sound and disposing mind and memory, or capable of executing a valid deed or contract.

(*b.*) That the execution of said paper writing by the said Julia M. Adams was procured by undue influence practiced upon and against her by the said Decatur Morgan and by his wife Jennie G. Morgan, or by him in conjunction with some other person or persons to your petitioners unknown.

(*c.*) That the execution of the said paper writing was not freely or voluntarily made by the said Julia M. Adams as her last will and testament, but the execution thereof by her was procured by fraud and coercion exercised upon her by the said Decatur Morgan and the said Jennie G. Morgan, or by them in conjunction with some other person or persons to your petitioners unknown.

Wherefore your petitioners pray as follows:

9 1. That issues may be framed under the direction of this court, to be tried before a jury thereof, to determine the allegations of fact as to the validity of said paper writing, dated February 11th, 1905, as aforesaid, and purporting to be the last will and testament of the said Julia M. Adams, as alleged.

2. That process may issue and be served upon all parties interested herein, requiring them to appear and make answer hereto.

3. And that they may have such other and further relief as the nature of the case may require.

CARRIE M. ADAMS.
CHARLES H. ADAMS.

J. J. DARLINGTON,
S. HERBERT GIESY,
Att'ys for Caveators.

STATE OF CONNECTICUT, *County of Fairfield, Stamford, Conn., ss:*

I, Charles H. Adams, on oath say that I have read the foregoing petition and caveat by me and my co-petitioner subscribed and know the contents thereof, that the allegations therein set forth as of my personal knowledge are true, and that those set forth upon information and belief I believe to be true.

CHARLES H. ADAMS.

10 Subscribed and sworn to, before me, this 4 day of August, A. D. 1905.

WARREN S. ABEL,
Notary Public.

[NOTARIAL SEAL.]
WILLIAM H. BERTNEL,
JAMES BROCK, *Witness.*

(Endorsement: Caveat of Charles H. Adams & Carrie M. Adams, Filed Aug. 7, 1905. James Tanner, Register of Wills, D. C., Clerk of Probate Court.)

11 In the Supreme Court of the District of Columbia, Holding the Probate Court.

In re Estate of JULIA M. ADAMS, Deceased. No. —.

The Answer of Decatur Morgan, Executor and Beneficiary under the Will of Julia M. Adams, Deceased, to the Petition and Caveat Filed Herein by Carrie M. Adams and Charles H. Adams.

1. Answering paragraph one of said petition and caveat, this respondent admits the allegations therein contained.

2. Answering paragraph two of said petition and caveat, this respondent, upon information and belief, admits the allegations therein contained.

3. Answering paragraph three of said petition and caveat, this respondent admits the allegations therein set forth, but at the same time affirms that said paper writing was and is the last will and testament of the said decedent and was executed in strict conformity with the provisions of the Code of the District of Columbia.

4. Answering paragraph four of the said petition and caveat, sub head (*a*) thereof, this respondent denies that said decedent was incapable of executing said last will and testament but on the contrary asserts that she was fully capable of executing the same, and also avers at the same time she was capable of executing a valid deed or contract.

Further answering paragraph four, under sub head (*b*)
12 your respondent denies that he exercised any undue influence whatsoever upon said decedent, either acting singly or acting jointly with his wife or any other person or persons whatsoever, but on the contrary avers that said will was executed voluntarily by the decedent and free from any illegal or improper influences as aforesaid.

Further answering paragraph four, sub head (*c*) thereof, your respondent avers that said last will and testament was executed freely and voluntarily by said decedent and denies that he, acting apart from others or jointly with Jennie G. Morgan or with any other person or persons whomsoever, coerced said decedent in any manner or practiced any fraud whatsoever upon her.

Further answering said petition and caveat, your respondent prays that notwithstanding said caveat said will may be admitted to probate and record in this honorable court and that letters testamentary may issue to him as prayed for in his petition filed herein.

DECATUR MORGAN.

E. HILTON JACKSON,
Attorney for Respondent.

I, Decatur Morgan, on oath say that I have read the foregoing answer by me subscribed and know the contents thereof; that the statements therein made as of my own knowledge are true and those made upon information and belief I believe to be true.

DECATUR MORGAN.

Subscribed and sworn to before me this 13th day of September, A. D. 1905.

J. ARTHUR LYNHAM,
Notary Public.

[NOTARIAL SEAL.]

(Endorsement: Answer of Decatur Morgan to petition and caveat filed herein. Filed Sep. 14, 1905. James Tanner, Register of Wills, D. C., Clerk of Probate Court.)

13 In the Supreme Court of the District of Columbia, Holding the Probate Court.

In re Estate of JULIA M. ADAMS, Deceased. No. —.

The Answer of Jennie G. Morgan, Beneficiary under the Will of Julia M. Adams, Deceased, to the Petition and Caveat Filed Herein by Carrie M. Adams and Charles H. Adams.

1. Answering paragraph one of said petition and caveat, this respondent admits the allegations therein contained.

2. Answering paragraph two of said petition and caveat, this respondent, upon information and belief, admits the allegations therein contained.

3. Answering paragraph three of said petition and caveat, this respondent admits the allegations therein set forth, but at the same time affirms that said paper writing was and is the last will and testament of the said decedent and was executed in strict conformity with the provisions of the Code of the District of Columbia.

4. Answering paragraph four of the said petition and caveat, sub-head (*a*) thereof, this respondent denies that said decedent was incapable of executing said last will and testament, but on the contrary asserts that she was fully capable of executing the same, and also avers at the same time she was capable of executing a valid deed or contract.

Further answering paragraph four under sub-head (*b*), your respondent denies that she exercised any undue influence what-
14 soever upon said decedent, either acting singly or acting jointly with her husband or any other person or persons whomsoever, but on the contrary avers that said will was executed voluntarily by the decedent and free from any illegal or improper influence as aforesaid.

Further answering paragraph four, sub head (*c*) thereof, your respondent avers that said last will and testament was executed freely and voluntarily by said decedent and denies that she, acting apart from others or jointly with Decatur Morgan or with any other person or persons whomsoever, coerced said decedent in any manner or practiced any fraud whatsoever upon her.

Further answering said petition and caveat, your respondent prays that notwithstanding said caveat said will may be admitted to probate and record in this honorable court and that letters testamentary

may issue to Decatur Morgan as prayed for in this petition filed herein.

JENNIE G. MORGAN.

E. HILTON JACKSON,
Attorney for Respondent.

I, Jennie G. Morgan, on oath say that I have read the foregoing answer by me subscribed and know the contents thereof; that the statements therein made as of my own knowledge are true and those made upon information and belief I believe to be true.

JENNIE G. MORGAN.

Subscribed and sworn to before me this 13th day of September, A. D. 1905.

J. ARTHUR LYNHAM,
[NOTARIAL SEAL.] *Notary Public.*

(Endorsement: Answer of Jennie G. Morgan to petition and caveat. Filed Sep. 14, 1905. James Tanner, Register of Wills, D. C., Clerk of Probate Court.)

15 In the Supreme Court of the District of Columbia, Holding Probate Court.

In re the Estate of JULIA M. ADAMS, Deceased. In Probate. No. 13028, Docket 34.

Now come the caveators in the above entitled cause and move the Court to frame the issues for trial by jury and submit that under the pleadings said issues should be.

1st. Was the paper writing propounded as the last will and testament of Julia M. Adams, bearing date the 11th day of February 1905, executed by her in due form of law?

2nd. Was the said Julia M. Adams at the time of executing the said paper writing of sound and disposing mind and capable of executing a valid deed or contract?

3rd. Was the execution of the said paper writing by said Julia M. Adams, procured by the undue influence of said Decatur Morgan or Jennie G. Morgan or any other person or persons?

4th. Was the execution of the said paper writing by said Julia M. Adams procured by the fraud and coercion of the said Decatur Morgan or Jennie G. Morgan or any other person or persons?

J. J. DARLINGTON.
S. HERBERT GIESY.

16 Please take notice that we will call the above motion for action before Mr. Justice Stafford holding the Probate Court on Monday the 13th day of November 1905 at 10 o'clock A. M. or as soon thereafter as counsel can be heard.

J. J. DARLINGTON.
S. HERBERT GIESY.

Service of copy of above motion and notice acknowledged this 8th day of November 1905.

E. HILTON JACKSON.

(Endorsement: Motion for the framing of issues. Filed Nov. 9, 1905. James Tanner, Register of Wills, D. C., Clerk of Probate Court.)

17 Supreme Court of the District of Columbia, Holding Probate Court.

In re Estate of JULIA M. ADAMS, Deceased. In Probate. No. 13028.

Upon consideration of the caveats of Carrie M. Adams and Charles H. Adams and the answer of Decatur Morgan, the proponent of the alleged will and the person named therein as executor and Jennie G. Morgan his wife; and of the form of issues presented to the Court by said caveators and after argument by counsel for said respective parties, it is by the Court this 14th day of November A. D. 1905.

Ordered, that the following issues raised by said caveat, shall be tried by jury in this Court, namely;

1st. Was the paper writing propounded as the last will and testament of Julia M. Adams, bearing date the 11th day of February 1905, executed by her in due form of law?

2nd. Was the said Julia M. Adams at the time of executing the said paper writing of sound and disposing mind and capable of executing a valid deed or contract?

3rd. Was the execution of the said paper writing by said Julia M. Adams, procured by the undue influence of said Decatur Morgan or Jennie G. Morgan or any other person or persons?

18 4th. Was the execution of the said paper writing by said Julia M. Adams, procured by the fraud and coercion of the said Decatur Morgan or Jennie G. Morgan or any other person or persons?

And it is further ordered that said trial take place on the 18th day of January A. D. 1906.

WENDELL P. STAFFORD, *Justice.*

(Endorsement: Fixing issues and setting cause for trial. Filed Nov. 14 1905 James Tanner, Register of Wills, D. C. Clerk of Probate Court.)

19 Form No. 56.

Supreme Court of the District of Columbia, Holding a Probate Court.

Inventory of Money and Debts Due to Deceased.

Balance to the credit of decedent in the hands of Swartzell, Rheem and Hensey Co.....	60 02
Int. on note of Wm. Watson Eldridge to September 28, 1905.	17 50
	$77 52

DISTRICT OF COLUMBIA, *To wit:*

S. Herbert Giesy and E. Hilton Jackson, Collectors of the Estate of Julia M. Adams late of Washington D. C. deceased, do solemnly swear that the foregoing schedule is a true and perfect inventory of all the Money belonging to the deceased, and of all the Debts due to the said deceased, which have come to their hands or knowledge, and that they will well and truly charge themselves with all money and all and every such debt or debts as shall hereafter come to their knowledge or possession.

S. HERBERT GIESY.
E. HILTON JACKSON.

Sworn to and subscribed before me, this 27th day of November A. D. 1905.

M. J. GRIFFITH,
Deputy Register of Wills for the District of Columbia,
Clerk of the Probate Court.

(Endorsement: Inventory of Money and Debts. Filed Nov. 27, 1905, James Tanner, Register of Wills, D. C., Clerk of Probate Court.)

20 Form No. 55.

Supreme Court of the District of Columbia, Holding a Probate Court.

We, the under-signed, appointed by the said Court to examine and appraise the personal estate of Julia M. Adams late of the District of Columbia deceased, do hereby certify that the following schedule is a true and correct appraisement of said estate in so far as it has come to our knowledge, a return of which we have made to the Court of even date herewith:

At 1008 H St. N. W.:

2 Notes of Francis A. Blundon for $400. each, dated April 23, 1896, payable 5 years after date with Interest at 6% 1st Note secured by Deed of Trust on Lot 118, Square 3, West Eckington and 2nd note on Lot 119, Square 3, West Eckington	$800 00
2 Notes of Lewis E. Brenninger one for $300. and one for $400. both dated October 17, 1902 and payable 3 years after date with Interest at 5%. Secured by Deed of Trust on Lot 60, Square 24, Columbia Heights.....	700 00
2 Notes of Wm. A. Feulkner, one for $450. and one for $550. both dated December 30, 1898, payable 3 years after date with Interest at 6%. 1st note secured by Deed of Trust on Lot 21, Square 63, Petworth Addition, and 2nd note on Lot 12, Square 81, Petworth Addition	1000 00

2 Notes of Wm. A. Feulkner, one for $450. and one for $550. both dated December 30, 1898, payable 3 years after date with Interest at 6%. 1st note secured by Deed of Trust on Lot 22, Square 40, Petworth Addition, and 2d note on Lot 30, Square 40, Petworth Addition..	1000 00
1 Note of Wm. A. Feulkner for $250. dated December 30, 1898, payable 3 years after date with Interest at 6%. Secured by Deed of Trust on Lot 28, Square 84, Petworth Addition	250 00
	$3750 00
Amount forward	$3750 00
7 Notes of Wm. J. Palmer for *for* $400. each, dated November 22, 1889, payable 3 years after date with Interest at 6%. Secured by Deed of Trust on Lot 46, Square 36, Columbia Heights	2800 00
Note of Wm. Watson Eldridge for $873. dated March 28, 1888, payable 2 years after date with Interest at 6%. Time extended to March 28, 1893 and amount reduced to $700. Secured by Deed of Trust on Lot 11, Block 13, B. F. Gilbert's Subdivision of Takoma Park	700 00
1 Gold watch & chain	20 00
1 Brooch	1 50
1 Gold pencil	50
1 Band ring	1 00
1 Set ring	1 00
1 Pair ear-drops	75
2 Pairs eye-glasses	75
1 Oak desk	2 00
1 Upholstered rocker	2 00
1 Oak "	1 25
3 Trunks	5 00
2 Small paintings	75
Lot of books	8 00
1 Fur cape	100 00
	$7394 50

21 *Recapitulation.*

Household effects	$11 00
Jewelry	25 50
Stocks	.....
Bonds	.....
Books	8 00
Wearing Apparel	100 00
Horses, Carriages, etc	.....
Secured notes	7250 00
Total	$7394 50

Witness our hands and seals this 26th day of September, A. D. 1905.

ROBERT J. JONES,
JAS. G. BURNS,
Appraisers.

DISTRICT OF COLUMBIA, *To wit:*

S. Herbert Giesy and E. Hilton Jackson, collectors of the estate of Julia M. Adams, late of Washington, D. C. deceased, do solemnly swear that the foregoing schedule is a true and perfect Inventory of the goods, Chattels and Personal Estate of said deceased, except money belonging to, and debts due, the deceased, that have come to their hands or possession at the time of the making thereof, and that what hath since, or shall hereafter, come to their hands or possession they will return an additional inventory of; that they know of no concealment of any part of the deceased's estate by any person whatsoever, and that if they shall hereafter discover any concealment, or suspect any to be, they will acquaint the Court with the same.

S. HERBERT GIESY.
E. HILTON JACKSON.

Sworn to and subscribed before me this 22nd day of Nov., A. D. 1905.

WM. C. TAYLOR,
Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court.

(Endorsement: Inventory of the Appraised Personal Estate. $7394.50. Filed Dec. 12, 1905. James Tanner, Register of Wills, D. C., Clerk of Probate Court.)

22 Supreme Court of the District of Columbia, Holding Probate Court.

In re Estate of JULIA M. ADAMS, Deceased. 13028, Administration.

Upon consideration of the motion of the attorney for the caveators made in open court that the trial of the issues framed herein be continued and that they be set for trial at a later date it is this 7 day of March 1906 ordered that said trial take place on the 16th day of April 1906.

WENDELL P. STAFFORD, *Justice.*

(Endorsement: Order setting case for trial April 16 1906. Filed Mar. 7 1906. James Tanner, Register of Wills, D. C. Clerk of Probate Court.)

23 In the Supreme Court of the District of Columbia, Special Term for Probate Business.

In the Matter of the Estate of JULIA M. ADAMS, Deceased. No. 13028, Adm. Doc. 34.

Petition and Caveat.

Frank W. Adams respectfully shows to the Court as follows:

1. He is a citizen of the United States, a resident of Dayton, in the State of Ohio, and files this petition as heir at law and next of kin of Julia M. Adams, deceased, as hereinafter shown.

2. The said Julia M. Adams departed this life in the city of Washington, in the District of Columbia, heretofore, to wit, on the 24th day of June, A. D. 1905, leaving her surviving, as her only heirs at law and next of kin, your petitioner, Frank W. Adams, a nephew, Carrie M. Adams, a niece, and Charles H. Adams, also a nephew, all of whom are of full age, the said Carrie M. Adams and Charles H. Adams being residents of Norwalk, in the State of Connecticut.

3. Said decedent, as your petitioner is informed and believes, and therefore avers, left no real estate, but died possessed of certain first mortgage real estate notes, aggregating about seventy-two hundred dollars, ($7200), and also left a paper writing bearing date,
24 to wit, the 11th day of February, A. D. 1905, purporting to be her last will and testament, which paper writing, heretofore, to wit, on or about the 29th day of June, A. D. 1905, was filed herein and application made for its probate as the last will and testament of the said testatrix, by one Decatur Morgan, who is named therein as executor.

4. Your petitioner hereby contests the validity of said paper writing, dated February 11th, 1905, and as aforesaid offered for probate as the last will and testament of the said Julia M. Adams, and as the grounds thereof alleges as follows:

(*a*) That the said Julia M. Adams was not, at the time of execution of the said paper writing, of sound and disposing mind and memory, or capable of executing a valid deed or contract.

(*b*) That the execution of the said paper writing by the said Julia M. Adams was procured by undue influence practiced upon and against her by the said Decatur Morgan and his wife, Jennie G. Morgan, or by them in conjunction with some other person or persons to your petitioner unknown.

(*c*) That the execution of the said paper writing was not freely or voluntarily made by the said Julia M. Adams, as her last will and testament, but was procured by fraud, exercised upon her by the said Decatur Morgan and the said Jennie G. Morgan, or by them in conjunction with some other person or persons to the petitioner unknown.

25 Wherefore your petitioner prays as follows:

1. That issues may be framed under the direction of this Court, to be tried before a jury thereof, to determine the allegations

of fact as to the validity of the said paper writing, dated February 11th, 1905, as aforesaid and purporting to be the last will and testament of said Julia M. Adams as alleged.

2. That process may issue and be served upon all parties interested herein, requiring them to appear and make answer hereto.

3. And that the petitioner may have such other and further relief as the nature of the case may require.

S. HERBERT GIESY,
FRANK W. ADAMS,
Attorneys for Caveator.

STATE OF OHIO, *County of Montgomery, ss:*

I, Frank W. Adams, on oath say that I have read the foregoing petition by me subscribed and know the contents thereof, that the allegations therein set forth as of my personal knowledge are true, and that those set forth upon information and belief I believe to be true.

FRANK W. ADAMS.

Subscribed to and sworn to before me this 26" day of August, A. D. 1905.

[NOTARIAL SEAL.] WILLIAM G. POWELL,
Notary Public, Montgomery County, Ohio.

(Endorsement: Petition and Caveat of Frank W. Adams. Filed May 5 1906. James Tanner, Register of Wills, D. C. Clerk of Probate Court.

26 In the Supreme Court of the District of Columbia, Holding a Probate Court.

In re the Estate of JULIA M. ADAMS, Dec'd. No. 13028, Admn. Doc. 34.

Order.

Upon consideration of the motion of attorneys for the caveators to have a specific day set for the trial of the issues framed herein, it being impossible for the court on this day heretofore set for the trial of said issues to try the same, it is, this 5th day of May, A. D. 1906, ordered that said trial take place on the 7th day of May, A. D. 1906.

JOB BARNARD, *Justice.*

(Endorsement: Order setting date for trial. Filed May 5 1906. James Tanner, Register of Wills, D. C. Clerk of Probate Court.)

27 MONDAY, *May* 7, 1906.

Mr. Justice Barnard presiding.

In re Estate of JULIA M. ADAMS, Deceased. No. 13028, Adm. Doc. 34.

This cause coming on to be heard it is ordered by the Court, with consent of the Justice holding Criminal Court Numbered Two (2), that the issues in this cause be tried by the jury summoned and now in attendance upon that Court: whereupon, upon consideration thereof it is further ordered by the Court that the Caveators, Charles H. Adams, Carrie M. Adams and Frank W. Adams shall be Plaintiffs, and that the Caveatees, Decatur Morgan and Jennie G. Morgan shall be Defendants in the trial of said issues: whereupon come here as well the (Caveators) Plaintiffs by their Attorney, J. J. Darlington and S. Herbert Giesy as the (Caveatees) Defendants by their Attorney, E. Hilton Jackson, and a jury of good and lawful men of the District of Columbia, to wit:

John H. Hopkins.
Henry W. Marshall.
Walter E. Schneider.
Jerome C. Hutton.
John W. Draper.
M. B. Flynn.
Edwin S. Marlow.
Peter P. Smith.
Henry Baum.
Wm. H. West.
J. H. Hogan.
Wm. Bailey.

who being duly sworn to try and true answers make to said issues, after hearing the evidence in part are respited until the regular meeting of the Court tomorrow.

28 *Docket Entries.*

1906, May 7. Order that issues be tried by jury in attendance upon Criminal Court No. 2.
" " " Order making Caveators Plaintiffs and Caveatees Defendants.
1906, May 7. Jury sworn and respited until tomorrow.
Witnesses for (Caveators) Pl'fs 10.
Witnesses for (Caveatees) Def'ts to prove will 2.

(Endorsement: 1st Minute Entry. Filed May 7, 1906. James Tanner, Register of Wills, D. C., Clerk of Probate Court.)

29 MONDAY, *May* 14, 1906.

Mr. Justice Barnard presiding.

In re Estate of JULIA M. ADAMS, Deceased. No. 13028, Adm. Doc. 34.

CHARLES H. ADAMS, CARRIE M. ADAMS, FRANK W. ADAMS (Caveators), Plaintiffs,
vs.
DECATUR MORGAN, JENNIE G. MORGAN (Caveatees), Defendants.

Now come here again the parties aforesaid in manner aforesaid and the same jury that was respited on Friday, May 11, 1906: whereupon, the jury, after the case is given them in charge, upon their oath say:

In answer to the first issue:

Was the paper writing propounded as the last will and testament of Julia M. Adams, bearing date the 11th day of February 1905, executed by her in due form of law?

They answer Yes.

In answer to the second issue:

Was the said Julia M. Adams at the time of executing the said paper writing of sound and disposing mind and capable of executing a valid deed or contract?

They answer No.

In answer to the third issue:

Was the execution of the said paper writing by said Julia M. Adams, procured by the undue influence of said Decatur Morgan or Jennie G. Morgan or any other person or persons?

They answer Yes.

In answer to the fourth issue:

Was the execution of the said paper writing by said Julia
30 M. Adams, procured by the fraud and coercion of the said Decatur Morgan or Jennie G. Morgan or any other person or persons?

They answer No.

Docket Entries.

1906, May 14. Verdict breaking will.
Witnesses for plaintiffs 3.

(Endorsement: Minute Entry. Verdict breaking will. Filed May 14, 1906. James Tanner, Register of Wills, D. C., Clerk of Probate Court.)

31 In the Supreme Court of the District of Columbia, the Fourth Day of June, A. D. 1906.

At Law. No. 13028.

In re Estate of JULIA M. ADAMS, Deceased.
vs.

The Clerk of said Court will note an appeal in the above entitled action to the Court of Appeals, and issue citation to the caveators herein.

E. HILTON JACKSON,
Attorney for Caveatees.

(Endorsement: Notice of appeal. Filed Jun. 4, 1906. James Tanner, Register of Wills, D. C., Clerk of Probate Court.)

32 Supreme Court of the District of Columbia, Holding Probate Court.

In re Estate of JULIA M. ADAMS, Deceased. No. 13028, Administration.

Upon consideration of the motion of the caveatees by their attorney E. Hilton Jackson to fix the amount of the bond to be given on appeal it is this 6th day of June 1906 ordered that a bond of $100 to cover costs and not to act as a supersedeas be given.

JOB BARNARD, *Justice.*

(Endorsement: Order fixing amount of bond on appeal. Filed Jun. 6, 1906. James Tanner, Register of Wills, D. C., Clerk of Probate Court.)

33 Supreme Court of the District of Columbia, Holding a Probate Court.

CHARLES H. ADAMS, CARRIE M. ADAMS, FRANK W. ADAMS, Plaintiffs,
vs.
DECATUR MORGAN, JENNIE G. MORGAN, Defendants.

Estate of JULIA M. ADAMS, Deceased. No. 13028, Administration.

The President of the United States to Charles H. Adams, Carrie M. Adams, Frank W. Adams, Greeting:

You are hereby cited and admonished to be and appear at a Court of Appeals of the District of Columbia, upon the docketing the cause therein, under and as directed by the Rules of said Court, pursuant to an Appeal from the Probate Court of the

District of Columbia, on the 4 day of June, 1906, wherein Decatur Morgan, Jennie G. Morgan, Appellants, and you are Appellees, to show cause, if any there be, why the Judgment rendered
34 against the said Appellants, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Harry M. Clabaugh, Chief Justice of said Court, this 4 day of June, A. D. 1906.

[COURT SEAL.]

Attest:

WM. C. TAYLOR,
Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court.

Service of the above Citation accepted this 9 day of June 1906.

S. HERBERT GIESEY,
Attorney for Appellees.

(Endorsement: Citation on Appeal. Issued June 4, 1906. Filed Jun- 11, 1906. James Tanner, Register of Wills, D. C., Clerk of Probate Court.)

35 *Memorandum.*

Appeal Bond approved June 14, 1906.

36 In the Supreme Court of the District of Columbia, Holding a Probate Court.

In the Matter of the Estate of JULIA M. ADAMS, Deceased. Administration, No. 13028.

To J. J. Darlington, and S. Herbert Giesy, Esqs., Attorenys for the Caveators.

GENTLEMEN: Please take notice that I will present for settling the Bill of Exceptions in the above entitled cause to Mr. Justice Barnard, in Criminal Court, No. 2, on Monday, July 16th, A. D. 1906, at Ten o'clock, a. m., or as soon thereafter as counsel can be conveniently heard.

I hand you herewith copy of the foregoing proposed Bill of Exceptions to be presented to the Court as aforesaid.

E. HILTON JACKSON,
Attorney for Caveatees.

I have this day received copy of the foregoing motion also copy of the foregoing proposed Bill of Exceptions.

J. J. DARLINGTON,
Attorney for Caveators.

July 3" 1906.

(Endorsement: Notice for settling Bill if Exceptions. Filed Jul- 3, 1906. James Tanner, Register of Wills, D. C., Clerk of Probate Court.)

37 Supreme Court of the District of Columbia, Holding a Probate Court.

In re Estate of JULIA M. ADAMS, Deceased. No. 13028, Adm. Doc. 34.

Upon motion of E. Hilton Jackson, in open Court it is, this 25" day of July, A. D. 1906, ordered, adjudged and decreed that the time for filing the transcript of record in the above entitled cause is hereby extended to and including September 1, 1906.

ASHLEY M. GOULD, *Justice.*

(Endorsement: Order extending time for filing transcript of record. Filed July 25, 1906. James Tanner, Register of Wills, D. C., Clerk of Probate Court.)

38 Supreme Court of the District of Columbia, Holding Probate Court.

In re Estate of JULIA M. ADAMS, Deceased. No. 13028, Adm. Doc. 34.

Upon motion of E. Hilton Jackson, in open Court it is, this 31" day of August, A. D. 1906, ordered, adjudged and decreed that the time for filing the transcript of record in the above entitled cause is hereby extended to and including October 10, 1906.

WENDELL P. STAFFORD, *Justice.*

(Endorsement: Order extending time of filing transcript of record. Filed Aug. 31, 1906. James Tanner, Register of Wills, D. C., Clerk of Probate Court.)

39 In the Supreme Court of the District of Columbia, Holding a Probate Court.

In re Estate of JULIA M. ADAMS, Dec'd. Administration, #13028.

Upon motion of E. Hilton Jackson attorney for the Caveatees the time for making up of transcript of record herein is hereby extended to the 10" day of November A. D. 1906 inclusive of said day.

JOB BARNARD, *Justice.*

October 10" 1906.

(Endorsement: Order extending time for making up transcript of record to and including Nov. 10, 1906. Filed Oct. 10, 1906. James Tanner, Register of Wills, D. C., Clerk of Probate Court.)

40 *Bill of Exceptions.*

In the Supreme Court of the District of Columbia, Holding a Probate Court.

In the Matter of the Estate of JULIA M. ADAMS, Deceased. Administration, No. 13028.

Be it remembered that the above entitled cause came on to be heard upon the issues framed in the Probate Court before Mr. Justice Barnard and a jury on the — day of May, A. D., 1906.

Present for the caveators Messrs. J. J. Darlington and S. Herbert Giesy; and for the caveatees, E. Hilton Jackson, Esq.

Thereupon counsel for the caveators announced to the Court that the caveators abandoned the first issue, namely, the issue as to the due execution of the will; and thereupon the Court ordered that the caveators be made plaintiffs and the caveatees defendants; and further ordered that the caveatees formally prove the execution of the said will.

Thereupon the caveatees duly proved the formal execution of the said will, dated the 11th day of February, A. D., 1905 according to law as a will of real and personal estate of Julia M. Adams, deceased, by the oaths of Howard C. Riley and Julia Hicks (now Mrs. William H. Woodcock), they being all of the subscribing and attesting witnesses thereto, and the death of the said testatrix, Julia M.
41 Adams, in the District of Columbia, on the 24th day of June, A. D., 1905, being admitted, thereupon the said will was offered and admitted in evidence and read to the jury, and was by them examined.

The said will is, as follows:

"I, Julia M. Adams, of the City of Washington, District of Columbia, formerly a resident of Danbury, State of Connecticut, do make and declare this my last will and testament, hereby revoking any and all former wills by me at any time heretofore made.

Item 1. I first direct the payment of my just debts, if any owing, at my decease, and my proper funeral expenses. It is my desire that my remains be buried in Rock Creek Cemetery in a lot that I own jointly with my friends Jennie G. Morgan and her husband Decatur Morgan.

Item 2. I next direct that two hundred dollars be paid to Jennie G. Morgan for the purpose of buying and selecting a stone properly inscribed, to be erected to mark my last resting place.

Item 3. I give and bequeath to my friend Jennie G. Morgan, my gold watch, all my other jewelry, all my clothes, personal effects and books.

Item 4. I give and bequeath to Jennie G. Morgan the sum of three thousand dollars for her kindness and care of me; and in the event of her death before mine, to her husband Decatur Morgan.

Item 5. I give and bequeath to Decatur Morgan the sum of One

thousand dollars, and in the event of his death before mine, to his wife, Jennie G. Morgan.

Item 7. I give and bequeath to my niece, Carrie M. Adams the sum of ten dollars.

Item 6. I give and bequeath to Epiphany Episcopal Church of Washington, D. C. the sum of two hundred and fifty dollars for the endowment fund of the Church.

Item 8. I give and bequeath to my nephew Frank M. Adams the sum of ten dollars.

Item 9. All the rest, residue and remainder of my estate, which consists only of personal property, I give and bequeath to my nephew Charles H. Adams, his heirs and assigns forever.

Item 10. I name and appoint Decatur Morgan, of Washington, District of Columbia, executor of this my last will and testament.

In witness whereof I have hereunto set my hand and seal at Washington, District of Columbia, this 11th day of February, in the year of our Lord one thousand nine hundred and five.

JULIA M. ADAMS. [SEAL.]

Signed, sealed, published and declared by the testatrix, Julia M. Adams, as and for her last will and testament, in the presence of us, who at her request and in her presence and in the presence of
42 each other, all being present together at the same time, have hereunto subscribed our name as witnesses this 11th day of February in the year of our Lord one thousand nine hundred and five.

HOWARD C. RILEY.
JULIA HICKS."

Thereupon the caveators to maintain the issues on their part joined called as their witness CHARLES H. ADAMS who testifies that he was a nephew of the deceased and lived at Norwalk, Connecticut; that the only relatives living at the time of her decease were his brother, Frank W. Adams, and his sister, Caroline M. Adams, and himself, all being children of a brother of the deceased; that the testatrix came to Washington in 1861 or 1864 and lived here up to the time of her death; that the witness and his brother Frank were both machinists and his sister "a sort of a nurse," and had been for about seven years. In response to a question witness stated that the relations between testatrix and himself and brother were the friendliest but there was a little friction between his sister and testatrix. Said friction occurring about 15 years ago and growing out of the fact that his sister smiled at something said about testatrix'- dress. Witness stated that his sister owned a little place with a large mortgage on it, that he owned a place with a mortgage on it, that his brother owned nothing, that his aunt was familiar with the circumstances of the family. Witness stated that it was through testatrix that he built and that a year after he built she sent him $1,000.00, to take up a part of the mortgage on which he was to pay interest if she ever called
43 for it. This happened in 1894 and neither the $1,000.00 or interest was called for by testatrix. Witness stated he

wrote testatrix every Sunday for 18 or 20 years before her death and that she wrote him frequently until her hands became paralyzed; said testatrix wrote him 8 letters between the 1st of January and the 1st of July, 1904, at which latter date testatrix went to the Morgans' to live, after which he received from her only one letter, a short note. He visited testatrix in Washington, December 17th, 1903, which was the only time he ever visited her here. His brother Frank visited the testatrix a year prior to that time when she gave him a gold watch. Said his aunt visited him when she could get away. On the occasion of his visit to Washington said testatrix took him to the Treasury Department to show him room where she worked for 30 or 40 years, but could not find it, and came away without showing it and forgot other things she wanted to show him. She wrote him once to find what his full name was. Said these things did not compare with the kind of woman she was 4 or 5 years previous when she was very bright about knowing what she wanted to do.

Cross-examination:

Says the testatrix never received a visit from his sister, but that once when testatrix was in Norwalk, Connecticut, she called at the store where her sister was working to see her, and that every time she was there she visited her. This was in 1898 or 1899 the last time that testatrix was north. Says testatrix did not write to his sister. That she wrote only to him. Said his brother came to Washington, having been sent by his employer, the National
44 Cash Register Works of Dayton, Ohio. That he came here for that purpose, and while here called on testatrix. Said the occasion of friction between the testatrix and his sister as related in his direct examination was the only occasion of friction or reason he ever heard of why relations between his sister and testatrix were not pleasant. Said he knew nothing about the Morgans until he met them at his aunt's funeral. That his aunt had written to him nothing about them except to mention their names. Thereupon counsel for the caveatees showed witness a letter which he identified as having been written by himself, and offered the same in evidence. It is, as follows:

"SOUTH NORWALK, CONN., *Sept.* 28, 1904.

DEAR MRS. MORGAN: I want to thank you, (as well as I can) for your kindness to Aunt Julia, who has written me about yourself, her "lovely new home" and how nicely she was situated.

Her last letter was devoted almost exclusively to a description of her pleasant surroundings, the freedom of your house, the quiet, the fresh air, but above all else, the being with friends.

It must seem like beginning life anew to her after forty long years of loneliness, self sacrifice and absence from her old home and relatives to find some one of whom she could (as she said) say "I was sick and they took me in."

It certainly seems to me that she has had more than her share of the hardships of life, which, beginning when a mere child, have followed her for a full three score and ten years and no one but herself

and her Maker knows what she has suffered, both mentally and physically, while the only attention that she received depended entirely upon what she was able to pay for it—and yet, no grumbling, no fault finding but always "So glad that it was no worse."

Now, at her advanced age with but a single thing to look forward to, she can feel once more that she is with friends. Friends for friendship's sake and not for the dollars that has been her experience in the past.

Again thanking you and assuring you of our appreciation of your kindness and trusting that if the time comes "Even as you have done it unto one of the least shall it be done unto you."

Respectfully, C. H. ADAMS."

45 The following letter, being identified by witness, was also offered and admitted in evidence, as follows:

"SOUTH NORWALK, CONN., *June* 22, 1905.

MY DEAR MRS. MORGAN: Your esteemed letter reached us today, but Oh, what sad news.

From the time of receiving your first letter I felt that this was the end, or the beginning of it, possible because of the letter itself indicating anxiety and partly because of her being taken just as father was.

Cannot tell you how pleased we are to feel that she is with you. I had heard her speak of you and your husband so often that I felt almost acquainted and when I was in W— she spoke of "running down to Mrs. Morgan's" to spend the evening. We had been tramping a good deal for her and when night came she was too tired.

How can I give her up? She has been more than parents to me in some respects. For past 16 or 18 years perhaps 20 there has not been a Sunday that I have not written to her if she was "at home" and at present I believe that I have every letter that she sent me. Many hours have passed very pleasantly while reading and re-reading letters that were several years old that had been written by her when she could hardly move on account of being so tired or while suffering with rheumatism.

Poor girl, I fear it will soon be over. How I wish that I could do something, anything, for her and what can I do to partially repay you for your great kindness to her, to me."

Other parts of the letter were omitted, which concluded, as follows:

"Thanking you over and over again, I am Sincerely,

C. H. ADAMS."

Witness says the only time he ever visited his aunt in Washington was in December, 1903, and that he saw her when she lived in Danbury, Connecticut, when that place was her home. Said he was apprised by Mrs. Morgan of the serious condition of his aunt sometime prior to her death, but that he did not start to Washington until after he had heard of his aunt's death.

Redirect examination:

46 Witness says what information he got as to the kindness of the Morgans towards his aunt was from Mrs. Morgan's letters, that he got only one letter from his aunt while she was staying with the Morgans. Witness was shown a postal card of May 13, 1905, addressed to him and signed by his aunt, which he said was not in his aunt's hand-writing. The postal card reads, as follows:

I have decided not to take Room 26 will not leave where I am.
J. ADAMS.

In recross-examination:

Witness said the letter he received from his aunt with reference to her going to the Morgans' was misplaced. Witness said that there were two letters he received from his aunt which were not at his disposal; that one of these letters was written to him after she went to the Morgans' telling him how nicely she was situated there, etc. Witness further testified that during her stay with the Morgans, he was frequently advised by the Morgans as to his aunt's illness. During her last sickness would get two notes in one day, that he was fully advised as to her condition during her last illness; that he informed the Morgans to go ahead and make all arrangements in the letter of June 22nd, 1905.

This witness recalled, further testified that the subject of *of* the testatrix coming to his home to live was discussed, but she told him she could not stand the climate, and that the doctor forbade her to visit up there the latter part of her life. Also that her letter to his wife hereinafter set forth was received May or June 1904.

47 And thereupon the caveators further to maintain the issue on their part joined called R. E. DOAN who testified that he had known testatrix since 1894, when he met her at La Fetra's Hotel. Said he knew her well, as their rooms were close together; saw her every day for a long while. Witness further testified that he had been practicing law for thirty odd years, and on one occasion, drew a will for the testatrix, and got her reinstated in the Treasury Department, after she had gotten into some trouble with the Government; That he drew up a paper for her giving two chairs to Miss Malone; said he saw her almost every day up to the time she left La Fetra's; said he called on her 3 or 4 times after she went to the Morgans' but only got to see her once; that he was informed on the other occasions by Mrs. Morgan that she was not in condition to be seen. Before testatrix left La Fetra's for the Morgans' she was gradually growing more forgetful and would repeat things. She would tell you something and in a short time come and tell you again, apparently having forgotten what she had said; her mind was quite weak at that time, very different from what it was when witness wrote the will 8 or 10 years before. In response to question as to whether before she left La Fetra's she was at that time of sound mind witness replied "Well, that is pretty difficult to tell

what is meant by a sound mind. It was a little difficult for her to connect subjects"—I would have very grave doubts about it Miss Adams was a peculiar little woman. If you crossed her she was very stubborn. If you humored her she was all right; she would do most anything. In that way you could get her to do most anything, or she would not do what you wanted her to. But I noticed her mind, gradually, from year to year, getting weaker, and she would
48 be incoherent and would not connect well. She would tell you two or three times certain things, apparently having forgotten, and then come back and say: "I don't want you to say anything about it." Well, it was a matter of no consequence in any form. Of course I humored her." Said sometimes he would see her at breakfast, lunch, and dinner, and in the evening. Said he saw her almost thousands of times in the last ten or twelve years. Said the occasion upon which he saw her at the Morgans' was in June, 1905, when he was invited into the room by Mr. Morgan or some other person, and remained there a short time. Said testatrix did not have much to say. Said she felt so good because she had her clothes on; said she had not had them on for weeks. Repeated this over and over. Her mental condition at that time was pretty poor; she could not connect two or three sentences very well.

On cross-examination:

Witness testified that it might have been only three occasions that he called on the testatrix at the Morgans'. Said he had known the Morgans a long time and his relations with them were altogether pleasant. Said he was there once when he was informed she was not in condition to be seen. Witness' memory being refreshed he testified that when he saw Miss Adams in June, Mrs. Morgan was there and excused herself to go to church, leaving himself and wife in the room alone with Miss Adams. Said the relations between the testatix and the Morgans were friendly, that he saw nothing to the contrary; that he gained this knowledge from Miss Adams
49 as well as from the Morgans. In response to question, if witness had not said that Miss Adams was a very stubborn woman, he replied: "I don't know but that I did. Perhaps that is not a proper statement of it. It would not do to cross her. She would rather you would agree with her. Remember, she was quite old when I first knew her. I think she was between eighty and ninety when she died; but she liked to be humored, and I have a streak of humor in me, and I always humored her, and she was very kind to me." Witness further testified that he could not say testatrix was a strong minded person. Said testatrix had that persistent stubbornness that you could not drive her at all; that she would give you no reason for it.

And thereupon the caveators further to maintain the issues on their part joined called Mrs. MARIA M. DOAN, the wife of the last witness, who testified that she had known the testatrix 10 or 12 years, and knew her at the time she left La Fetra's Hotel; said she seemed to be very forgetful of things; sometimes she would like a person

and then again she would not; always kind to witness and her husband; called witness down once for laughing in the hall at La Fetra's, but felt very badly about it and apologized many times for it. Testified that for the last year or more at the Hotel she noticed that testatrix was growing feeble in her mind; she called twice on the testatrix at the Morgans'; once on Sunday in June, 1904; on this occasion witness and husband were alone with the testatrix; Mr. and Mrs. Morgan having gone to church. Testatrix spoke of being dressed the first time for a long while; frequently reverted to
50 this fact. Inquired about the witness' little grand-daughter of whom she was very fond and when witness tried to tell her about her she would say, "Oh I feel so odd in a dress." Witness called again in April, 1905, and saw the testatrix in her room, when she thought the mind of the testatrix was failing.

Cross-examination:

Witness said she only recalled calling twice while the testatrix was at the Morgans', making short calls upon each occasion. Not over 15 minutes. Said testatrix was glad to see her; talked about witness' grand-daughter, when spoken to her about her, whom she had not seen for two or three years, speaking kindly and affectionately of her; and seemed to appreciate that the child had inquired about her. Attention of the witness having been called to the advanced years of the testatrix she was asked, "Did you regard that (her failing mind) as anything unnatural during the last years of her life?" A. No, I do not know that I did. I would not take her to be a woman being very capable of looking after any business matter or anything." Said she discussed matters generally with the witness on these two occasions, but that she repeated things over and over. Said she would sometimes speak well of the Morgans and sometimes said they did not treat her well at all that she did not get enough to eat. Made a good deal of complaint once of the Morgans' when witness saw her at La Fetra's and that after her weakened condition of mind she was rather a changeable woman. Said testatrix was rather changeable after her weakened condition of mind. On re-direct examination, witness said the occasion of her seeing testatrix at La Fetra's
51 was her call to try to get a room, she wanted to come back, said she did not like down there, that she felt so much more at home at the hotel and she was hungry then for a cup of coffee and the manager sent her out to the dining room and gave her a cup of coffee.

And thereupon the caveators further to maintain the issues on their part joined called Dr. JAMES T. SAFFOLD, who testified that he had been a physician since 1885; knew her intimately for 20 years, when both were in the Government employ; when he met her in 1885, regarded her as one of the most remarkable women he ever met; said she suffered from catarrh particularly of stomach, and was not able to take very much nourishment; at that time her mental characteristics were high, her mind clear, a good conversationalist, and an intelligent woman, extremely economical and as far from

being profuse with her money as giving it away, she was extremely close and penurious; was her physician until within 4 or 5 years before her death, and noticed on the occasion of his last professional visit indications of senile degeneracy and symptoms of progressive paresis manifesting themselves by incoherence in talk and disconnected sentences. At that time testatrix had a premonition that she would be paralyzed, and gave witness a power of attorney, which was duly offered and admitted in evidence and incorporated herein, and marked Exhibit Saffold No. 1. Witness said paresis was not an ailment from which people recovered, describing it as being progressive, getting worse and worse. Said he never called on testatrix at the Morgans'. On cross examination, he stated that he gave up practice in 1900; that prior to that time he was a clerk in the
52 Treasury Department and practiced outside of hours and during his 30 day leave; said he saw Miss Adams the last time on Christmas or New Year's day of 1903; said the power of attorney had been in his possession ever since it was executed, but that he did nothing in pursuance thereof, never had any occasion to do anything.

Thereupon the caveators further to maintain the issues on their part joined called Mrs. ALBENIA VAN WICKLE, who testified that she was the wife of William P. Van Wickle; knew the testatrix from the time witness was a child; testatrix lived at her mother's home for a number of years; would see her off and on, but did not call on her; at La Fetra's; saw her once at the Morgans' having heard that she was very ill; in February or March, 1905; before this time had met her on the street several times just stopping a few moments to speak to her, when she found she was in very poor health; On the occasion of this call, witness was ushered into Miss Adams' presence by Mrs. Morgan; said Miss Adams had just recovered from a severe illness, and had evidently been desperately ill; expressed surprise to see the testatrix at the Morgans', when testatrix seemed nervous; witness said she was interrupted several times by Mrs. Morgan who came into the room; when witness expressed surprise that she had left La Fetra's she seemed to be nervous; testatrix told her she was very much worried about money matters. Found her conversation was so interrupted by Mrs. Morgan that she left; noticed that the relations between testatrix and Mrs. Morgan were apparently very friendly; said the former was very nervous when Mrs. Morgan would
53 come into the room; witness said testatrix spoke of money matters and was very much worried and excited over that part of the conversation; said she had been sick and had to spend much money; said testatrix immediately stopped when Mrs. Morgan would come into the room and would begin to converse with the latter; said this happened three or four times upon each occasion that Mrs. Morgan came in; spoke several times during this interview about money matters and about being worried over them. On cross-examination, she said she saw no reason for Mrs. Morgan coming into the room, except once when Mrs. Morgan brought in some flowers that witness had brought to the testatrix; said testatrix was

appreciative of the flowers; said she was not bright on this occasion, and was a very ill woman, just getting over a spell of sickness;

And thereupon the caveators further to maintain the issues on their part joined called JAMES A. BLACK, the clerk at La Fetra's Hotel since 1897, who testified that he knew her during her stay there, and saw her on three different occasions after she left the Hotel; when she came to the Hotel and said she wanted to come back, stating that she was discontented, dissatisfied and unhappy and wanted to come back to the hotel; that on each occasion witness agreed to take her back to occupy her old room because she desired it, saying she always felt at home there but that on no occasion did testatrix return, as agreed; following one of these visits witness received a postal card conceded to have been
54 written by Mrs. Morgan, postmarked May 13, 1905, addressed to the Hotel La Fetra, as follows:

MAY 13, 1905.

I have decided not to take room 26; will not leave where I am.
J. ADAMS.

On Cross Examination witness testified that on each of the three occasions which were seven or eight weeks apart from each other he had conversations with the testatrix, who told him she desired to come back, that he entered into an arrangement with her whereby she could return and occupy her old room. On re-direct examination he testified that on each of these occasions he received a message once by mail and again by a colored boy with a note, stating that the testatrix did not desire to return, each time giving no reason for her change of mind.

Thereupon the caveators further to maintain the issues on their part joined called JOHN JOY EDSON, the President of the Washington Loan & Trust Company; who testified that he knew the testatrix for probably 30 years; that she rented a safe deposit box from the Company on November 17, 1891, the very month his Company began the safe deposit business; that she gave up said box on October 7, 1904; by virtue of the following order, admitting to have been signed by Julia M. Adams, and also admitted in evidence:

"1008 H STREET N. W., *October* 7, 1904.

Washington Loan & Trust Company:

Please let Mrs. Decatur Morgan have the contents of my box, and, as I am sick, I will not retain the box any longer.
JULIA M. ADAMS."

Witness further testified that the testatrix used to be very
55 bright both mentally and physically, that he saw her some time before she gave up the box, and engaged in a little conversation with her as she was coming out from the Safe Deposit Department; that he noticed how feeble she was, she seemed to

be forgetful and disconnected in her conversation which struck him very forcibly; that he had known her for over 30 years and had had a great deal to do with her in a business way, that she had been a very painstaking, saving woman, that it struck him then she was in a very bad shape for taking care of her money; he thought she needed some one to look after her; all of which was the impression he formed of her that day, which was some time prior to October 7" 1904.

On cross examination, witness said he saw her on that occasion only for a few minutes, that she appeared to be ill and feeble; witness also stated that, on June 29, 1904, testatrix gave authority to Mrs. Morgan which was admitted in evidence, as follows:

"I hereby nominate, constitute and appoint Mrs. Decatur Morgan my legal representative or deputy to have full access to the Safe No. 294, in the vaults of the Washington Loan & Trust Company, in the same manner as I could in person, under the terms of the contract.

JULIA M. ADAMS."

The above was witnessed and the body of it written by Jennie G. Morgan, the Mrs. Decatur Morgan referred to and by Allen T. Hill, the custodian of the vault. Also that on June 29", 1904, testatrix gave Mrs. Morgan a power of attorney to have access to the box as freely as the testatrix could have.

56 Thereupon the caveators further to maintain the issues on their part joined called Mrs. MALVINA G. CARMICK, who testified that she had known the testatrix for 30 years, when witness was quite a young girl, that, for 15 years, she saw very little of her after which her acquaintance was renewed, when she called on her frequently at La Fetra's and at the Morgans'; said 4 or 5 years before her death she was a woman of good strength of character and force; although she was not what she was in earlier life; Noticed quite a decline in her mental strength as well as her physical strength, 4 or 5 years before her death; testatrix was in very poor health before she went to the Morgans'; once when witness called at La Fetra's testatrix was scarcely conscious of the visit; when she called again later she noted that she was very much better; testatrix said she was not sure witness had been there; The first time she called on her at the Morgans' she found her very sick and very weak: Before she left La Fetra's for quite a while her memory was failing; noticed that she was failing very fast from that time on, in a very marked degree; would repeat herself very often; would tell the same thing over twice within a very few minutes and seemed unconscious of it; she had a weak feeble almost childish expression and manner; needed someone to look after her as you would a little child; witness called very often at the Morgans' and particularly during testatrix' last illness; saw her when she was very weak and very feeble in February, 1905, when she seemed to be mentally incapacitated in every way, and perfectly dependent;

noted a very great deterioration in her mental condition after
57 she went to the Morgans', before that testatrix was particular about her dress and hair, but after she went to the Morgans' she never saw her hair properly arranged and she was never dressed properly, always like an invalid who was unable to dress; on one occasion testatrix told witness when she got to the Morgans' she found a large arrearage for rent on Mr. Morgan's store and house, and that she had to pay up that arrearage for fear of having to move again or being homeless. Witness was very strongly convinced during the last year or year and a half of testatrix's life that she was failing rapidly, said she had been very ill for a long time, and her mental strength had about left her. Said she remembered three times that she saw testatrix alone at the Morgans', and said it may have been oftener.

On cross examination, witness testified that Mrs. Morgan sent for her once when testatrix was very sick; witness had two sons but she thinks testatrix never saw them; when she would call at the Morgans' she would discuss with Miss Adams matters which witness thought would be mutually interesting, but on many occasions testatrix would be too ill that there was very little conversation; said testatrix was always ill after she went to Morgans but would sometimes be able to get about the room; said there was no very connected conversation, Miss Adams was in such a feeble state of health; that she never found when her mind was active during that summer and the following winter, never saw when she was not suffering and distressed and very weak; the first summer, when
witness first called, she found her in the parlor; she once
58 asked witness about her boys and her family as she had often before going to the Morgans'. Discussed church matters and church entertainments and things of that kind with the testatrix, who would inquire about witness' church in Brooklyn, both being Episcopalians, does not remember that she ever asked witness about the church or anything of that sort after she went to the Morgans' does not remember that testatrix had given witness money for tickets and suppers for the church at different times but remembers no such after going to Mrs. Morgans.

Thereupon the caveators further to maintain the issues on their part joined called HENRY J. GROSS, who testified that he was a bookkeeper for Swartzell, Rheem & Hensey, and was employed there in 1904, when the style of the firm was the B. H. Warner Co.; said he knew the testatrix, who was a customer of the firm; that she called there in June, 1904, and got a note cashed for $500.00, and in July, 1904, came in and got another note cashed for $1,500.00, that the notes were real estate notes, upon which the Company collected the interest and principal, and made remittances to the testatrix, the investment in these notes having been made by the firm; that in September, 1904, testatrix came in to get another $1,500.00 note cashed, which the firm declined to cash, and Mr. Rheem had conversation with her that witness did not hear. Further testified that he did not see the testatrix again until May, 1905, when she

came in to get $30.00; gave her receipt therefor; appeared at that time to be very excited and nervous. On being asked his opinion as to her mental and physical — witness testified "Her mind was not very good, because on different occasions, on three occasions
59 I remember distinctly that I sent to her for notes, and she always got the wrong note, and I had to send her back again to get the proper note, to indorse it." The above notes were kept at the Washington Loan & Trust Company; that testatrix would go there and get the notes and bring them in for the indorsement of the interest; on one occasion she made three trips before she got the right note; said this inability to get the proper notes was noticed by him three or four months before she got the notes cashed in June and July & that in former years she had had no difficulty in getting right notes and bringing them to witness. On cross examination, witness said she would always produce the right note finally after making three trips; that he never sent anybody to the Trust Company to accompany her; said when he would make the indorsement he would give the note back to her, that when the interest became due again testatrix would get the note and bring it in; said the receipt testatrix signed in May for $30.00 was signed without assistance. Further testified that testatrix drew quite a number of orders drawn on the firm for money that they were drawn to the order of Jennie Morgan, and were presented by Mrs. Morgan. On re-direct examination, witness testified that the interest payments were sometimes made by checks and the testatrix sent the notes in afterwards for the indorsements.

And thereupon the caveators further to maintain the issues on their part joined called CLARENCE B. RHEEM, who testified that he was a member of the B. H. Warner Company & is a member of the Swartzell, Rheem & Hensey Co., its successor; that he looked after testatrix's investments for about 20 years; that the process was for the testatrix to bring her money in for investment and he would

(Testimony continued on page 61—Exhibit on page 60.)

60 CAVEATOR'S EXHIBIT B.

1008 H ST., N. W., *Nov.* 28, 1904.

Mr. Rheem, Washington, D. C.

DEAR SIR: On the 25th of Oct., 1904, I gave to Mrs. Jennie G. Morgan, through Percy H. Russell, "Notary Public," power of attorney" to transact all business for me in drawing the paper Mr. Russell neglected to change the *printed* year, in one part but the day of the month and year was written out near the bottom of the paper. In Justice to Mrs. Morgan, I wish to state that I have *never* given *any* one else Power of Attorney and never notified the Office not to recognize her as my Power of Attorney. She is fully qualified to act for me, and it is my wish she will represent me in all business transactions. Last Friday, when not recognized as my Power of Attorney, she called at once with her husband, on Mr. Russell, un-

fortunately he was home sick, and at the present writing has not been to his office, but he will call at your office in person with Mrs. Morgan to rectify the mistake which was a very humiliating ordeal for Mrs. Morgan to undergo.

Will you kindly let me have the full amount of Blundon's note? I have been sick a long time and have two large doctor's bills to pay as well as other debts and I do not wish any of my notes renewed. I want all my money in as soon as possible.

JULIA M. ADAMS.

Nov. 28, 1904.

61 find investments in first deed of trust notes; that during the first part of his acquaintance with the testatrix, she was an intelligent and very active woman; was particularly anxious to keep her funds invested closely, so there would be no loss of interest; that she only invaded the principal once prior to the last year of her life which was 10 or 12 years prior to her death, when she sent $1,000.00 to her nephew in Connecticut. That in June, 1904, she got a $500.00 note cashed, in July, $1500.00 worth of notes cashed, came again about the first part of the following September to get $1,500.00 worth of notes cashed, but these witness refused to cash, becoming suspicious that something was wrong; that upon expressing his refusal to the testatrix she left without a word; that the next morning testatrix came into the office about half past eight, in a very excited condition; thanked the witness from the bottom of her heart, and said "Please don't cash any more notes for me even if I ask it myself * * *. Those people are robbing me, the people I am living with, the Morgans." On being asked by witness why she did not leave them, she replied "I can't, I have been trying to get away for a long time." She was very much excited and agitated about it. Came in again after that, thanked the witness and cautioned him not to cash any more notes even if she asked him herself; met her once after that on F street, when she whispered to him not to cash any more notes, seemed to be afraid somebody was listening and was very nervous and excited.

(Testimony continued on page 61—Exhibit on page 62.)

62 WASHINGTON, D. C., *May* 7, 1906.

Swartzell, Rheem & Hensey Co., Real Estate Brokers, 916 F Street N. W.

1904.			
Feb'y	3.	To am't paid by checks and drafts.....	$12.
March	3.	" " " " " " "	18.75
"	31.	" " " " " " "	10.
April	18.	" " " " " " "	17.50
"	21.	" " " " " " "	10.
May	16.	" " " " " " "	81.25
June	6.	" " " " " " "	253.12
"	10.	" " " " " " "	62.50
"	13.	" " " " " " "	500.

June	20.	To am't paid by checks and drafts.....		$67.50
July	11.	" " " " " " "	.....	1,505.60
Aug.	1.	" " " " " " "	.....	12.
Sept.	6.	" " " " " " "	.....	25.
"	15.	" " " " " " "	.....	50.
Oct.	3.	" " " " " " "	.....	50.
"	18.	" " " " " " "	.....	50.
Nov.	1.	" " " " " " "	.....	50.
"	15.	" " " " " " "	.....	50.
Dec.	1.	" " " " " " "	.....	50.
"	15.	" " " " " " "	.....	50.
"	19.	" " " " " " "	.....	50.
"	29.	" " " " " " "	.....	50.
1905.				
Jan.	14.	" " " " " " "	.....	50.
"	30.	" " " " " " "	.....	50.
Feb'y	14.	" " " " " " "	.....	50.
"	27.	" " " " " " "	.....	50.
March	8.	" " " " " " "	.....	75.

63 After that, in October, 1904, Mrs. Morgan came in with some loans belonging to the testatrix and asked witness to cash them which he declined to do. In November, witness sent Miss Adams word by letter, or by Mrs. Morgan, to send a note in which note was going to be paid at maturity, and Mrs. Morgan brought it in with a power of attorney, which power of attorney was duly offered and admitted in evidence and the material parts incorporated herein and marked Caveators Exhibit A.; that he declined to recognize this power of attorney, giving as his excuse that it appeared to be executed in 1894, instead of 1904; said he had no intention of recognizing the power of attorney in any event as he had consulted counsel and had been advised that it was his duty not to pay any more principal to the testatrix under the circumstances. After that, a day or two, witness received a letter from Miss Adams, which was duly offered and admitted in evidence and incorporated herein and marked Caveators Exhibit B; by counsel it was agreed that the letter was written by Mrs. Morgan and signed by Miss Adams, the letter being dated November 28, 1904.

Thereupon, upon receipt of this letter, witness decided to see Miss Adams and called for this purpose at the Morgans' on the 30th of November. Witness said he called previously, in September or October, but that Mrs. Morgan refused to let him see Miss Adams tho- he insisted he should be allowed to see her in view of his close business relations with her for so many years stating as a reason that the Doctor had forbidden anyone to see her. Witness then asked Mrs. Morgan for the address of the nephew of the testatrix, which Mrs. Morgan declined to give him, and then told him she did not have it, saying, when he asked her to get it from
64 Miss Adams, that the testatrix did not want him to write to her nephew. On the occasion of the second call, witness

went to find out whether testatrix really wanted the proceeds of the Blundon note as indicated by the letter; testatrix told him and Mr. Swartzell, who accompanied him, that she did not; that she wanted all her money kept invested; that Mrs. Morgan was present, and when Miss Adams said that Mrs. Morgan said "Well, that is the way with Aunt Julia; she changes her mind; she never knows what she wants to do from one time to another;" witness said he saw her again in 1905, coming out of his office; that prior to June 1904, Miss Adams was in the habit of drawing only interest. At this point on the day following, after the previous testimony of Mr. Rheem, Henry J. Gross was recalled and testified that he desired to correct his testimony of the previous day and to add that he saw Miss Adams the next morning after the declination by the firm to cash the $1,500.00 notes; that Miss Adams came into the office and expressed her thanks in the presence of Mr. Rheem and witness that they had not cashed these notes, and added "Never give me any more money, except my interest that is coming to me. If I ever ask for a dollars worth of principal, never give it to me as long as I live." Whereupon Clarence B. Rheem resumed his testimony, and produced certain drafts extending from February 1904, to June 14, 1905, which were offered and admitted in evidence, and set forth herein being marked Exhibit —; By agreement of counsel a list of these drafts & checks were put in evidence as follows: see opposite

Witness said, after November 15, 1904, the above drafts were drawn by Miss Adams on the firm in favor of Jennie G.
65 Morgan.

Witness further testified that, on June 6th, he cashed another loan for Miss Adams for $253.12, making $2250. for June & July; that the amounts drawn beginning with September were much in excess of what Miss Adams drew prior to that time, ranging from $100 to $200 per month & prior to that time she had drawn only the interest upon her investments; that, up to the first of June 1904 the investments of the testatrix amounted to $9,000.00 drawing 5% and 6% interest; that, from September on, witness was of the impression that Miss Adams was totally unable to take care of her own affairs. On cross-examination witness corroborated Mr. Gross as to what testatrix said in their presence the morning following the refusal of the firm to cash $1,500.00 in notes. Said his interview with Miss Adams followed the letter already referred to and marked Exhibit B; Said the occasion of his first call at the Morgans' on Miss Adams grew out of the fact that Mrs. Morgan had been bringing in to the office some notes to be cashed and he wished to ascertain Miss Adams' condition & whether she really wished them cashed and that he was not permitted to see her. Said Mr. Swartzell called with him on November 30th; that on the occasion of this call he said nothing to Miss Adams about her nephew's address, but that Mrs. Morgan remarked "Aunt Julia, you don't care to have your nephew know anything about your business," to which testatrix replied "I don't care to have my nephew know anything about my business." Also testified that previous to this

second call he had got the nephew's address from a friend of Miss Adams; said on this occasion she was not strong enough in witness' opinion to discuss her business affairs; told testatrix they
66 were willing to continue in charge of her business affairs. Further testified that whenever testatrix made calls on him between July 11th, 1904 up to June 14, 1905, he would respond by furnishing her with the money up to the extent of the drafts, which ranged all the way up to $75.00. Witness here explained that the blank drafts were placed by him in the possession of Miss Adams at the suggestion of Mrs. Morgan to save her the inconvenience of having to go back & get Miss Adams to endorse the checks, so that it would not be necessary for Miss Adams to endorse the drafts after they were drawn; that whenever Miss Adams made use of one of these drafts in drawing upon the firm it was always honored; that no drafts were presented with the signature of Miss Adams that were not honored; that these drafts were honored up to June 14th, 1905, 10 days prior to the death of the testatrix. Witness did not remember whether he sent these drafts by Mrs. Morgan or through the mail. On re-direct examination, witness said when Mrs. Morgan suggested on the occasion of the interview referred to, that the testatrix did not wish to communicate with her nephew about her business affairs the answer of testatrix was "as though she was repeating the question; that is, she used the same language that was used in the question." Witness did not think she mentioned any reason for not wishing him to communicate with her nephew. On being asked why he continued to honor drafts drawn by her up to the time of testatrix's death, he replied "Almost immediately after the interview I had with Miss Adams, after de-
67 clining to cash the notes for her, * * * I consulted counsel * * * and I was advised it was my duty to withhold the principal from testatrix in case of the payment of the notes, at the same time * * * I was told to allow a liberal support, even though it were taken from the principal, unless I chose to embar-ass Miss Adams by lunacy proceedings. I was acting by the advice of counsel in making these payments," and that counsel told him he could make a liberal allowance for her support and that, if he did not the result would be lunacy proceedings which would be painful and distressful to the old lady. In response to a question by the Court, as to how the firm was to be secured in these advances, witness stated the Company was really assuming the responsibility of a loss rather than embar-ass Miss Adams by refusing to honor these drafts for support. He further testified that these checks and drafts, a great many of them, represented advances over and above her income; that the firm had no security for those that were in excess of her income; that they did not have possession of the notes that they were loaning this money upon the faith of being re-imbursed in the event of the death of the testatrix from her estate.

Thereupon the caveators further to maintain the issues on their part joined called GEORGE W. F. SWARTZELL, a member of the firm of Swartzell, Rheem & Hensey Company, who testified that prior to

November 30, 1904, when he accompanied Mr. Rheem to see Miss Adams, he had no personal transactions with her and that his acquaintance was casual; that the purpose of the call was that Mr. Rheem might have from the testatrix some statement with respect to her wishes concerning the reinvestment of her funds, and
68 that testatrix said she wished her principal reinvested; that the interview did not last more than 10 or 15 minutes; it did not appear to witness that she was in a fit condition to manage her own affairs, both physically and mentally, but particularly physically.

And thereupon the caveators further to maintain the issues on their part joined called A. W. McCreary, who testified that he lived at La Fetra's from 1901 to a week before he gave his testimony in this cause; that while there he met testatrix almost daily; said she was a frail old lady and sort of childish; that she got worse as time went on; that he never saw her after she went to the Morgans'; that he did not suppose at the time she left the hotel she was able to take care of her own business; that in his judgment she was not capable of taking care of her own business. On cross-examination witness testified he would see her frequently in the hall and in the dining room; that just before she left the hotel he did not talk with her in the dining room, but would pass a word with her in the hall.

Whereupon the caveators further to maintain the issues on their part joined called Mrs. Emma A. McCreary, wife of the last witness, who stated that she knew Miss Adams while at the hotel with her husband, that she was exceedingly frail, childish and forgetful; would come to her room and tell a story and come back in a few minutes and repeat it, come again in a short time and repeat it over, would repeat the story in the dining room and meet her in the hall and repeat the same thing, didn't seem to have any control of her memory. Upon being asked to give any instance showing
69 a change in her mental condition from the time witness first knew her she testified that testatrix sat close to her in the dining room at the same table and resented it when witness conversed with others, and if testatrix being a little deaf could not hear the conversation, she would make various exclamations of annoyance, and on one occasion testatrix rapped with great vehemence upon her plate with her fork to drown witness' voice. That such conduct was a marked change from her early acquaintance with the testatrix; although testatrix was at all times a little peculiar; that she grew steadily worse; that she had no ability whatever to take care of her business affairs at the time she left the Hotel was not responsible. On cross-examination, witness testified that the incident of the testatrix rapping her fork on the plate to drown witness' voice made witness decidedly cool toward her, but that on the last day witness saw her she had with the testatrix a most delightful, amicable and charming conversation, and that the testatrix conversed with the witness charmingly just before she left.

Whereupon the caveators further to maintain the issues on their part joined called Mrs. ELLA S. SCOTT, who testified that she was acquainted with the testatrix for 6 or 8 years, calling on her occasionally; that she boarded at La Fetra's and ate at the same table with her, and would see her twice a day; that she was sensible and intelligent when she first knew her; that she saw her when she went to the Morgans' and she didn't seem to be the same person at all; that her appearance was entirely different; and every time —
70 would go in testatrix would watch the door to see if anyone was coming in; saw her about once a month from about January 1905 until her death; in these last months she would say the same thing over every time witness would see her; and that she would drum on the ends of her chair and would say "Yes, call me Mrs. Morgan or Mrs. Hughes or Mrs. Anybody;" that witness chided her for not being careful about her dress, and for not fixing her hair like she used to; that she became so childish, so forgetful that when she would start to tell you anything and stop off and testatrix would say, "Well, wait, Yes, Mrs. Morgan is very nice, very good to me, etc.," and then listen a few minutes and go on with what she was going to say & say something else. On one occasion testatrix wished to sent to Mrs. Hughes, a friend, a little souvenir vase, told witness to take it but not to let Mrs. Morgan see it; told witness she had got lost, and walked until she was very tired & took a car & got off at a park and had to ask someone to take her home. This was when she went down to Warner's office on business. Also told witness she was very dissatisfied with the Morgans and wanted to go back to La Fetra's; told her that on three occasions; On cross-examination, witness stated she saw testatrix about six times after she went to the Morgans', would just drop in occasionally; never had any trouble about seeing testatrix; not the slightest; told witness Mrs. Morgan was very good to her; said on the occasion of her calls she would not generally see testatrix alone Mrs. Morgan would be in and out of the room attending to things; would see testatrix when she was sick, called her an invalid right along after January. Would see her walking
71 backwards and forwards across the room sometimes; noticed that she was naturally a very active little woman, which continued up to the last time that the witness saw the testatrix. At this point the inventory of the estate was produced which showed that the estate consisted entirely of personalty including promissory notes, household effects, etc., aggregating $7,394.50.

Thereupon the caveators further to maintain the issues on their part joined called Miss MARY E. MANN, who testified that she had been in Washington since 1873; that the deceased was her most intimate friend and during the first two years of her stay in Washington her room adjoined that of the deceased in the same house; that deceased always consulted witness about her business affairs; that the last occasion upon which she saw deceased was about the middle of October, 1904, in the National Fire Insurance Building. At that time witness thought deceased was at La Fetra's, and deceased replied: "I am not there any more. I have gone to the Morgans',"

whereupon witness said "I understand your arrangement with them was that in case you became very sick and they were going to take you to a hospital, that you had such a horror of it that you had arranged with them so that they could take you over to their house and take care of you." Decedent's reply was: "That was so, but Mrs. Morgan came to her and teased her so and cried and said that her rooms were vacant, and that there was a mortgage on some property they had; that they would lose if they did not get some help, and that her board and room would help them; and she kept coming night after night and teasing her, and then decedent said "I gave
72 way and am sorry I did it, for I never *saw* so disappointed in anybody in my life. Mrs. Morgan was so sweet and pleasant at first, but since I came there she began to misuse me. I was put upstairs in the same room that Mrs. Morgan wanted you to take, a back room." Said deceased insisted upon being put somewhere else and was brought down in the back parlor by the Morgans; that she could not stay there she was so lonesome, and had no one to read to her as she had at La Fetra's. Upon inquiry by the witness as to what the Morgans did she said "if I go into the parlor and speak to Mrs. Morgan, she will not talk to me. She snaps me up." Upon being asked by the witness if she got enough to eat deceased replied in a dazed sort of way: "Yes, but it is not what I can eat." And she added that she was sorry that she went there and on witness asking why she did not leave she said "They have got my money & I cannot get away;" that her manner was depressed and not like her old self; that they only had a short talk; said Mr Morgan treated her better than Mrs. Morgan; and that Mrs. Morgan misused her—The witness further testified that the testatrix's conversation was incoherent. Upon cross-examination witness *a*tated she saw the deceased several times prior to October 1904, in her office, when she was feeble in health and her mind was weak. Witness here volunteered the statement that the deceased told her she went to the Morgans in September but witness afterwards found out it was in June or July. Witness further testified that Mrs. Morgan asked her before Miss Adams went there to take rooms with her; that two months ago Mrs.
73 Morgan met witness in the street, and said she had these rooms for witness and offered — to the witness, but that witness did not go because she was lame.

Thereupon the caveators further to maintain the issues on their part joined called in rebuttal Mrs. MARIAM C. SEWALL who testified that she resided at Raleigh, N. C., was acquainted with Julia M. Adams and knew her during the winter of 1904-'05. Carried for the decedent a silver cup to Mrs. Hughes as a present from Miss Adams. Decedent handed witness the cup and asked her to give it to Miss Hughes, saying it was the last thing she had to give. Decedent also requested witness to put it in her hand bag and not let Mrs. Morgan see it. Witness called three times on decedent during the stay of the latter at the Morgans'; never saw Mr. Morgan on the occasion of these calls but thought Mrs. Morgan very kind and attentive to decedent. Witness noticed the deceased was very feeble and

thought her failing mentally because during conversation she often repeated things which she had just a little while before stated.

On cross examination, witness testified she saw deceased in the early part of January, 1905, again the latter part of February 1905; on this occasion deceased gave her the cup to take to Mrs. Hughes. The last time the witness saw her was to say good-bye. On these occasions witness conversed with decedent on the matters of the day; Washington City; where witness was from—her home; the decedent's home and early childhood; the kindness of Mrs. Morgan to decedent.

74 Thereupon the caveatees to maintain the issues on their part joined called IDA M. PIERSON, who testified she knew the deceased since 1878; that her intimacy continued from that time; that deceased took nearly every Thanksgiving Dinner with her; was present at family reunions of the witness; was scarcely a week she didn't meet her; that her child was named for the deceased who was god-mother for her; that she knew the deceased when she starved herself to take care of 'poor old aunt Hanna- Chappel;' that she continued to visit her while she was at La Fetra's and the Morgans'; was with her the last four days of her life continuously to the hour before she died; that she met Mrs. Morgan through Miss Adams; that she always saw her when she called at the Morgans'; and always alone except at the last; that Miss Adams would say to her "I want you to know that little woman, and you will love her, she has been so good to me * * * this is the first home I have had since I was a young girl, and I am so grateful to her." Witness further testified she could not possibly have lived with the deceased, although she loved her dearly; that she was a very exacting woman; that you would have to give up so many privileges in your own home, if you lived with her. That deceased objected to any attentions that might have been given to some one else; Upon being asked something of the mental traits and characteristics of the deceased, said "she was an unusually bright woman," noticed that she was failing physically and did not exert herself to go out as she had done, but was bright mentally to the last. As an instance of this she said that on the day before decedent died witness
75 suggested that she be changed from one side of the bed to the other to be more comfortable and nearer the door, that Mr. Morgan noticed this change when he came in and decedent replied "Yes, so you would not have so far a walk when you called on me;" that the husband of the witness came in two days before her death, that she recognized him and talked with him about an accident that he had had, and in reply to her husband's suggestion that he 'belonged to the fighting stock,' and was determined not to get killed by the car, decedent said , "No, that is what I am fighting now, I am going to get well;" that decedent heard of this accident at the time it happened about six week before; that decedent was very bright to the last, and talked rationally to the end, talked about her clothes, lamented the fact that she had not spring flowers on her hat, and apologized that her hair was not curled; prior to

this time she had invited witness to her Christmas tree and told witness she wanted a present from her. During her stay with the Morgans deceased discussed many things with the witness; told witness she did not wish to be carried back to Connecticut at her death, and went into the details of an arrangement about being buried in witness' lot in Arlington, but during her last sickness changed her mind; that to the last deceased was interested in everything witness would talk to her about, would ask her questions; said on one occasion she wanted to go to see witness at her home, but spoke of the hack hire or of changing cars twice and witness said "It will only be a quarter" and she said — didn't want to use all her money up; that witness had a mind of her own; On being asked as to her relations with her relatives, witness said she had no
76 affection for her niece; that she always spoke nicely of one nephew Charles, and of his wife and daughter, but never mentioned the others; that she told her her nephews and niece would not get a cent of her property, but afterwards became very friendly with this nephew. On being asked as to her relations with the Morgans, referring to Mrs. Morgan, 'the little woman has been everything to me, and it is strange that it should have been, she being a Southern woman and I an old Yankee, so stiff in my ways: This is the first home I have ever had. I want you to meet Mr. and Mrs. Morgan and be their friend. Witness further said she had never seen an own child do the things that the Morgans did for her, especially during her last sickness; that she had seen families in which the wife or the husband or a child had been ill and had died but had never seen any attention like the Morgans had showed Miss Adams; said Mr. Morgan was just as attentive as his wife; that this attention began with the first visit of the witness to the Morgans and continued to the end, making witness ashamed that she had not taken Miss Adams into her home and done these things for her; that Mrs. Morgan was the only person she ever saw Miss Adams affectionate with; that she never heard Miss Adams express any dissatisfaction with the Morgans; and always spoke of the Morgans' attention and of the little attentions that she could not possibly have had in a larger house, that she was afraid of being ill at La Fetra's because they would have sent her to the hospital. Deceased referred to Mrs. Morgan as 'dearie' and Mr. Morgan as 'Catur.' On cross examination, witness testified that she could
77 not go over the substance of all the conversations she had with the deceased during the last years of her life; that the topics were general; like one woman would speak of to another; that in 1900 to 1903 or thereabouts deceased had told witness her relatives would not get any of her property; that prior to that time, she had made a will in favor of a daughter of the witness. In response to question, witness stated that deceased was very fond of the wife of Charles H. Adams, and thereupon the following letter written in May or June 1904 was produced identified and offered in evidence:—

"B. H. Stinemetz & Sons, Hatters & Furriers, No. 1237 Pennsylvania Avenue, Washington, D. C.

DEAR EMMA: If I should ever be taken away, I want you to have my belongings, and if not, then Bertha must have them. Among my wearing apparel is a fur cape which will be at B. H. Stinemetz in the summer season, and for which there will be a receipt in my bureau drawer. I purchased it from them and they have always had the care of it in hot weather on account of the moths etc. Hope you are well, Lovingly.

AUNT JULIA."

Witness testified Miss Adams told her that she would not live with any of her relatives; that she knew physicians had advised her not to visit up there on account of the fatigue of the journey; that deceased had said nothing to witness about going back to La Fetra's. On being asked if deceased had told her about being lost witness replied: "I never did but once, but then I believe she got on a Ninth Street car at 9th and F instead of taking the 11th Street car, a mistake that any of us might have made as they run over the same track" and that the testatrix did not tell her she had gotten into a park and didn't know where it was. On being
78 asked if deceased showed any affection for her nephew Frank, witness replied 'Not until after he made his visit here, but deceased was offended that he didn't write to her and correspond with her afterwards and that the testatrix claimed he did not write to her after he went away. On being shown a letter of March 3rd, 1904, the witness identified the same as having been written by the deceased, which was offered in evidence as follows:

"DEAR CHARLIE: Had a letter from dear Frank. Will answer as soon as I get my courage up. Am thankful he is doing so well. Remember me to him when you write."

On re-direct examination, witness stated that her daughter in whose favor deceased had made a will, died in September, 1901.

Thereupon the Caveatees further to maintain the issues on their part joined called Mrs. SUSAN R. BURCHE, who testified that she first met the deceased at La Fetra's some years before her death; that she saw her there twice, when calling on Mrs. Morgan; that she saw her quite often after she went to live with the Morgans, up to the time of her last illness; that she saw her at the Morgans' alone upon the occasion of one of her calls, that their conversation was general, about Epiphany Church principally, as deceased had been a member of that church for years that she spoke of the auxiliary work in the church; that she spoke of the Morgans' kindness to her and her affection for them; said she felt she had a home since she had been there; spoke of Mr. and Mrs. Morgan like a mother would speak of children, calling the former 'dearie.' Mrs. Morgan was like a daughter to her, her treatment being 'kindness itself.' Never doubted that her mental condition was all right;

never thought her mind was weak or impaired; never noticed
79 that she was wandering or forgetful; noticed that she was a sick woman; always said she was very happy there; On cross examination witness testified she could not recall anything the testatrix said on any occasion that their conversations were general conversation and didn't remember much of the conversation; never knew her to transact or attempt to transact any business, never told witness she wanted to go back to La Fetra's; or that she had engaged a room to go back there on three different occasions.

Thereupon the caveatees further to maintain the issues on their part joined called Mrs. SERAPHINE GATTI, who testified that she knew the deceased six and a half years before her death; met her through Mrs. Morgan, when witness called on latter; saw deceased at first very frequently, but only three or four times after deceased went to the Morgans' beginning in February 1905; on one occasion saw her alone, on the others Mrs. Morgan would be in and out of the room. On one of these occasions discussed with the decedent the occupation for which witness was preparing herself—a trained nurse. This was in January or February 1905. Deceased said it was good training and the best thing witness could do, and expressed her belief that witness was competent to be a nurse. Witness could not recall other subjects of conversation, except deceased spoke of Mrs. Morgan to her, that she had done everything for her; also spoke kindly of Mr. Morgan; Gave a description of the room occupied by the deceased; said it was very large and had a great deal of sun in it; it was the room occupied by Mr. and Mrs. Morgan prior to that time and that witness had not discussed many
subjects with the testatrix, only witness' self a great deal.
80 On cross-examination, witness stated she visited Miss Adams first at the Morgans' in February, 1905, that she was then at the Morgans' could not recall any conversation except those already stated. On re-direct examination, being again asked as to her impressions of the mentality of the deceased replied "She seemed all right; was a very strong willed person." On re-cross examination being asked what evidence she had ever seen of a strong will said deceased declined to eat some bread and milk that Mrs. Morgan brought for her, as she was very tired of it. That this was about all the evidence of her strong will that she remembered.

Whereupon the caveatees further to maintain the issues on their part joined called Miss FANNIE GILLISS, who testified that she was a member of Epiphany Church, called on the deceased two years prior to her death, at the instance of Dr. McKim, while deceased was at the Morgans' and that she never called on her at any place but the Morgans'. That she always saw the deceased in her room that Mrs. Morgan went into the room at the solicitation. That she always solicited Mrs. Morgan to go into the room; that she generally talked with the deceased upon church matters, the endowment, and Dr. McKim, that deceased contributed $100.00 to the Endowment Fund each year but that witness did not know how that money reached the

church. She sometimes called on deceased weekly and sometimes twice a month up to two months before her death. Witness did not see her move about the room on any of these occasions, was generally in a Morris chair. That she would have the 'Star' in her hand apparently reading when she would come in that deceased had an average intellect only impaired by illness, natural weak-
81 ness from illness, that she had a very strong will power and could not be influenced and this condition was not materially worse up to her death: That Mrs. Morgan treated her with the utmost kindness, such as a child would show her mother; deceased spoke of Mr. Morgan with very great kindness and of the attentions she received from him, that she never expressed any dissatisfaction with the Morgans; that deceased was very fond of Dr. McKim and nothing could exceed her gratitude and appreciation because of a gift of his picture to her by the witness at Christmas. Deceased stated she was going to give it to Mrs. Morgan at her death. On cross-examination, witness testified that Dr. McKim's autograph was on the back of the picture. Deceased did not tell her she had tried to get back to La Fetra's three times and did not discuss with witness whether she was satisfied at the Morgans' or not; On being asked how witness knew deceased had a strong will power she replied that she had never seen it tested that "Natural instinct will tell you when a woman has a will power * * * and natural discernment of character." That Dr. McKim was in the habit of sending witness to visit the sick of his parish that she had absolutely no interest in the result of the trial. Attention being called to a remark she had made off the stand in the court room that she hoped caveators' counsel would not keep us from winning our case, referring to this case as "Our case" she replied I did of course because I am a witness and naturally interested on our side." Said also she wanted to win the case because she knew Miss Adams had left $250.00 to Epiphany, and was naturally interested that Epiphany should get it. Witness said that deceased had a little blue box for contributions to
82 the Woman's Auxiliary, and stated that she dropped money into it from time to time. That if she stated on the direct examination she knew testatrix two years prior to her death it was a "slip of the tongue," that she knew her only from the time she went to the Morgans. On re-direct examina[illegible] testified that she knew nothing of the bequest to the endowmen[illegible]and of the church prior to Miss Adams' death, and didn't know of the $100 contributed except that testatrix told her so.

Thereupon the caveatees further to maintain the issues on their part joined called Miss SUSAN V. HELLER, who testified that she had known the Morgans about ten years and the deceased six or seven, I knew her well three years prior to her death; prior to that time would drop in to bring flowers and things like that as a member of Epiphany Church; saw here once in a month or two months at La Fetra's; for a year before she left La Fetra's she called only once on account of the illness of the witness; called on her frequently at the Morgans'; seven times in December 1904, when testatrix was quite sick and in January and in February, and on the 8th of May. Some-

times would see the deceased alone, sometimes Mrs. Morgan would come in, to whom the deceased referred as 'dearie;' discussed with her principally the church work, deceased would inquire about some of the members who were sick, Miss Gilliss being among the number, the latter being sick in December; deceased also inquired about a member who was ill in the George Washington University Hospital, of whom the deceased had heard the witness speak,
83 never inquired about any other members of Epiphany only those two in particular, she discussed the Woman's Auxiliary, and wanted the witness to bring her a piece of work, stating that 'dearie,' meaning Mrs. Morgan would do it for her; referred to the great joy of the deceased over a photograph of Dr. McKim, that witness brought her on the 23rd of Dec. 1904 and that evening when Mrs. Morgan was out of the room deceased said, "I can never repay these people. A son and daughter could never do so much as they have done for me, but, when I am gone when I am dead,—she put it first gone, and then she said "when I am dead," I am going to leave them what I have left." Never heard deceased discuss her relatives. On being asked as to her mentality testified she was a woman fully capable of taking care of her own affairs; that you could not dictate to her; and would be led by nobody; She had a will, and would say "I want so and so done." Would ask witness what was going on; wanted to find out about things in the church; always warned, to take more care of herself; said she was afraid that witness would break down and get sick. On cross examination, she testified that she first called on deceased in September, 1904; that witness and Mrs. Morgan belonged to the same church organization and had for years; that she knew Mr. Morgan in a business way, dealt at his store. Said upon the occasion of her calls deceased would ask "Where is dearie?" didn't she let you in." Upon being asked why deceased asked for "dearie" witness replied "nothing more than she always seemed to want Mrs. Morgan in her presence." Her visits
84 would last from 5 minutes to half an hour. On December 29" 1904 witness carried a photo of their rector to her and witness never saw such great joy as she had over that picture Said deceased did not know Miss Magruder who was ill in the hospital, but became interested in her through the witness, and inquired about her repeatedly. Would ask her repeatedly about the various societies of the church, among others "The Daughters of the King." That witness and Mrs. Morgan both belonged to the King's Daughters. Said deceased told her no children could do as much as Mr. and Mrs. Morgan had done for her. And asked to give instances witness replied "In waiting on her and attending to her and everything." On one occasion deceased told her Mrs. Morgan stayed in to be with deceased, when in the judgment of the deceased she ought to have gone out and attended to some business. When asked to give an evidence of anybody's dictating to deceased she replied "I remember once she wanted some medicine at Atkinson's drug-store, having a prescription to be filled. Witness suggested that it be filled later and deceased replied "No, I want it and I want it now" and that witness based her opinion that Miss Adams could not be dictated to

upon that incident. Witness said she never discussed business matters with the deceased never saw her transact business, except that in December she was told by deceased that when she died she intended to leave all she had to Mr. and Mrs. Morgan.

Thereupon the caveatees further to maintain the issues on their part joined called Miss EMMA A. HELLER, who testified that she was a sister of the last witness, knew Miss Adams one week prior to her death, when she was sent for to nurse her in her last illness,
85 witness being a professional nurse. Did not converse with her much, but said she would discuss matters intelligently with her up to the day before she died. Referred to an accident that had happened to a friend of the deceased, the friend being Mr. Pierson, with whom the deceased laughed and joked on the occasion of his call the day before her death, about an accident to Mr. Pierson. Also mentioned the doctor's ordering some medicine for her and was about to write a prescription when deceased said, "You need not write a prescription, because there is such and such a medicine in the closet on a certain shelf in a certain corner," which no one knew was there, but which was found in the same identical place where the deceased said it was. That was the day before she died. Further testified that the relations between the deceased and the Morgans were most friendly and kindly, the deceased referring to Mrs. Morgan as "dearie" or darling. Said that neither could have treated her better if she had been their mother. On cross examination the witness testified that she went to the Morgans on the 18th of June, and that the deceased died on the 24th at 1:00 o'clock, a. m. Said she never discussed any subject with her and never heard anybody else discuss matters with her but that deceased would answer any questions that were asked her right away, that she was very bright on Thursday before her death. On being asked if Dr. Saffold did not call on Thursday and find the deceased unconscious, witness said the son called and that deceased talked with him and that she was not unconscious on Thursday.

Thereupon the caveatees further to maintain the issues on
86 their part joined called THOMAS N. EASTWOOD, who testified that upon his arrival in Washington in 1905, he engaged a room at Morgans', remaining there from January until the latter part of April; that he was naturally fond of old people, became acquainted with the deceased right away, saw her frequently in different parts of the house; that being a travelling salesman he would frequent the house at different hours of the day to procure samples and many times would meet Miss Adams; that he saw her alone in her room many times. Mrs. Morgan would ask him if he was not going out, to stay and talk with the deceased while she and Mr. Morgan went to church; that sometimes his conversation with the deceased was brief and sometimes more extended; witness further testified that he was a Northern man and deceased took quite a fancy to him and asked him about his home and such like; said he discussed incidents of the Russian-Japanese war with her, who could tell

him more about it in five minutes than witness could in ten years if he studied history; that she seemed to be well posted on that subject, that witness would bring up different subjects in conversation, would talk about her former home, and her church, to which she seemed perfectly devoted. Would talk to him as though she were an old friend; discussed the fact that Washington was a beautiful city and how pretty her home was. Referred to the fact that the Morgans had given up this room for her comfort. On one occasion deceased told witness she was going to leave, had been to La Fetra's to engage a room. On being asked the trouble she told wit-
87 ness she was inclined to be a little mad, that the Morgans were going to move on the third floor and that she would not be at home downstairs without them; that deceased had drawn this inference from the fact that some furniture had been taken out of her room, a favorite chair of Mr. Morgan's. Afterwards told witness it was a misunderstanding; that she did not want to leave, that she had made a great mistake and that she saw the mistake she had made, and expressed the hope that the Morgans would forgive her and the belief that she would not be treated as well at La Fetra's, the room there being a small one; that her idea was that if the chair was taken out, that Mr. Morgan would not be able to read to her, perhaps, and would not come and read to her as he was in the habit of doing; that the Morgans were very kind to her and she always said she was well treated. Witness further testified that the Morgans treated her with the utmost kindness; that when she knew Mrs. Morgan was upstairs attending to the duties of the house, deceased would ask where she was and why she did not stay with her more than she did; that, when Mrs. Morgan would come in, she would sometimes embrace her and want to kiss her and such like; that Miss Adams would frequently call Mrs. Morgan to come down stairs, and that the latter would always come. On cross examination, the witness being asked what the deceased said to him about her home, testified that deceased told him she was from Connecticut, and, on asking deceased why she did not go home, she said she had no one there who cared anything about her since the death of her sister; that she preferred to stay with those who were kindest to her, and added "Why should I want to leave here when I have this nice home, large room and the freedom of the
88 house?" On being asked what relations she spoke of as living in New England, the witness answered they might have been cousins or something like that, if he remembered rightly. On being asked whether deceased had not told him whether she cared for her relatives witness said she spoke of someone, some gentleman that she thought something of—a relative—but his name witness did not recall, but believed he was a relative. On being asked what deceased told him about her church, witness replied that she thought a good deal of Dr. McKim and a good many people there, though he did not recollect whether she mentioned anybody or not; and being asked further about the deceased having made arrangements to go to La Fetra's on one occasion, witness said deceased thought the Morgans were going to move away from her

and go upstairs and that she would not have the attention she was accustomed to; that the only reason she gave for thinking they were going to move away from her upstairs, and that she would not have the attention she was accustomed to was because a chair in her room had been taken out; and that he could not say he thought this highly intelligent and rational and reasonable; that some clothing packed in her room was also taken out; said witness derived most from a chair being moved out of the room and some clothes. Being asked for specific acts of kindness shown by the Morgans, he testified that Mr. Morgan would come down Sunday mornings and read to her; that Mrs. Morgan was as kind to her as a child would be to her mother; that whenever Miss Adams would make a request Mrs. Morgan 'would go right ahead and do it;' and that the
89 deceased seemed always to want Mrs. Morgan with her.

Thereupon the caveatees further to maintain the issues on their part joined called Mrs. MAY E. DUKE, who testified that she knew the deceased a year prior to her death, was introduced to her by Mrs. Morgan, while calling on the latter, a short time after Miss Adams went there; that she would run back for a little while to see Miss Adams when she would call on Mrs. Morgan, which was two or three times a week, which continued up to her death. Would some times see her alone; that the visits would not last very long; that the deceased seemed always cheerful and bright. Did not stay long enough to discuss much with her. Witness further testified that deceased told her that the Morgans were always doing something nice for her, waiting on her and giving her all the attention that could be given and she was going to remember them when she passed away. Witness herself observed that this treatment was very kind, such as she would like herself. On being asked as to the mental condition of the deceased, witness replied "She impressed me as being a very bright little woman. I could see nothing the matter with her mind, I thought she was all right as far as I could see. Said she would see her sitting up very often. That some times she would be walking about the room, that her step would be very quick; that she never heard her discuss her relatives, never told her any of the things the Morgans were doing for her. On cross examination, witness testified that deceased always spoke kindly of the Morgans when witness was alone with her, never told her Mrs. Morgan did not stay with her as much as she might or anything like that. Witness said
90 deceased was occupying the lower floor when she first met her, which she guessed was about three weeks after deceased moved to the Morgans'; never saw her off the first floor; neither discussed business of any kind with the deceased, nor saw her transact business of any sort.

Thereupon the caveatees further to maintain the issues on their part joined called JACOB H. LICHLITER, who testified that he had been a member of the local bar for 15 years, had known the deceased for 20 years, first as a clerk in the Internal Revenue Office in the Treasury Department, that his more intimate acquaintance began

in the spring of 1900, when the deceased called at his office to have him write her will, when he had with her an extended conversation in relation thereto, she giving him full instructions as to the will; that, upon drawing it he turned it over to her, who said she was going to put it in a safe deposit box in the American Security and Trust Company. Deceased called again to have the will rewritten with various modifications in 1901. That she came in all 4 times to have the will rewritten; could not distinguish the occasions, but deceased always gave some good reason, either the death of some friend or relative or a desire to change and make a larger provision or a smaller provision for somebody else, the deceased always discussing business matters in the most intelligent manner, being a very bright intelligent woman; that she was twice at witness' office in 1903, for the same purpose. On one occasion deceased wanted a change in
the will in the amount she desired to invest in a monument,
91 and at one time she mentioned the death of a friend, and on
another occasion perhaps the death of her sister or some relative referred to in a previous will. Said the above interviews occurred in 1903. Witness thought on two occasions in 1903 deceased called at his office for other purposes but not for purposes of making changes in her will. On being asked if he noted her physical and mental condition, witness said she would come into the office a little out of breath, being troubled with asthma; that she would sit down, wheeze a little and begin to talk, would be very chatty and pleasant; would pass a joke or tell a story; was bright and active, quick in her speech and altogether an exceptional woman; saw her again in the spring or early summer of 1904, when deceased came to his office, did not ask to make any alteration in her will, told him she was going with her friend Mrs. Morgan or had gone, witness did not remember which. On one occasion when deceased called at his office Mrs. Morgan was with her, does not remember which; When deceased called in 1904 her asthmatic trouble was somewhat aggravated, but did not notice much difference in her physical condition, was just as bright as she could be, always had a firm grasp on everything discussed with the witness—clear, positive, knew what she wanted and expressed it clearly, never told witness how much property she possessed, said she was making her investments through B. H. Warner Company, kept her securities in the Washington Loan & Trust Company in a safe deposit box there; that her will and certain other
papers were at the American Security and Trust, where she
92 had another safe deposit box; that she kept her wills in the
latter Company. Witness further testified he heard her discuss her relatives only in a general way; referred to her sister, Mrs. Barnum, also later to the death of this sister, or some other relative, referred to her two nephews and a niece; In October 1904, Mr. Morgan called on witness and said that Miss Adams desired to have her will rewritten, bringing with him a memorandum which he said was her direction, and witness wrote out the will, took it with him to the Morgan home with a witness for the execution of the will, was ushered into the parlor by Mrs. Morgan and waited; that a third witness was to be obtained, the one who was expected not appearing;

later went into the back room where Miss Adams was lying in bed, Mrs. Morgan accompanying witness; that the testatrix recognized him and asked him how he was, whereupon witness asked Mrs. Morgan to go out of the room; witness then told testatrix he understood she wanted to have a new will made, that he had written it by her direction and would like to read it over; that there were present in the room the two witnesses and himself; the testatrix was sitting up in bed, propped up somewhat with pillows, that he read the will to her paragraph by paragraph, having told her before he began to read if there was anything that did not meet with her wishes she could speak right up and it would be changed; that when he came to the part that disposed of her books, testatrix said that was not right, not exactly as she wanted it, after some discussion as to the books, Witness said "Well, let us go on to the end and see how it comes out, the balance of it;" that he read on and she said it was exactly as she wanted it, except the books; that witness asked
93 if there were many books, and she said "No," and pointed to them—that there were not many, and it would be just as good that way as any. It is such a small thing it will be just as good that way as the other." Witness did not know how long he stayed but thought from 15 minutes to half an hour; also had a pleasant conversation with her and chatted a little about different things. On being asked as to her mental condition said he discussed nothing with her except making of will, had a general pleasant conversation; deceased was thin in flesh but was very slight and frail from the time he first knew her; on that occasion was a little thinner and paler but had the same ring in her voice, clear, and distinct, and everything she said was absolutely intelligent, and she seemed to comprehend everything, witness thought she was quite as mentally capable as at any time that he had seen her only she was physically weaker.

Witness identified paper dated May 8, 1902, which was duly offered and admitted in evidence and incorporated herein and marked Exhibit G. On being asked for the circumstances of the signing of that document by the deceased, said Miss Adams came to his office and stated that she was getting to be an old woman, that none of her relatives were near by, that they did not know her very well, and being alone at La Fetra's, she might be taken sick and in need of somebody's care, which care she might not be able to receive at the Hotel, and she wanted witness to bear in mind that if she should die Mrs. Morgan and her husband should take care of her effects, and see to her burial and that this paper of May 8", 1902 was in the handwriting of Mrs. Morgan and signed by testatrix.

On another occasion she told witness Mrs. Morgan had been
94 very kind to her, almost like a daughter, and that if she became disabled she could rely on Mrs. Morgan to take care of her; that decedent always spoke with the very highest regard for Mrs. Morgan and spoke well of Mr. Morgan also; that, when witness prepared the will of October 11, 1904, for the decedent, decedent told him that the Morgans were extremely kind to her, had taken good care of her and had helped her in many ways.

On cross examination, witness testified that he had been a member of the bar for 30 years, had never before drawn a paper for a living person to give someone else power to take charge of them if they got sick or if she wished to change her hotel some third person should take charge of her and let her rely on them. Witness met Mrs. Morgan once through coming with the deceased. Witness said he continued to be the attorney for Miss Adams down to October 1904, that she never mentioned having any other attorney, that on two occasions witness discussed her investments with deceased and consisted in her asking whether he thought stocks or bonds or real estate investments were good. That this occurred in 1904, in witness' office; that she did not explain to him why she kept two safe deposit boxes; that he thinks he told her that was a useless expense, and that she later told him that she had dispensed with the one at the American Security & Trust Company; if the testimony should show she never had a box there, he would not know how to explain that. Further testified that on two occasions he re-wrote wills for deceased because of the death of a friend or relative. Witness being asked what he meant by saying in his direct examination
95 "he always noted the mental condition of the deceased, said "Would sit and talk with me, talk intelligently, that he made no note by writing down the language, but simply saw that she talked intelligently, and noticed that all she said was good and reasonable and proper under the circumstances." On witness' attention being called to his statement on direct examination that he noted her physical and mental condition, he said "When she talked with me she talked with intelligence and understanding, and just exactly as anyone would talk seeking information. On being asked if decedent had informed him in October, 1904, that she had written to Warner & Company to turn over some money to her that belonged to her and that they had refused, witness replied 'she had not,' that she never spoke to him on that subject. Being asked why he asked Mrs. Morgan to leave the room on that occasion he replied 'As a mere matter of precaution, I noticed she was a legatee under the will to the extent of $1000.' Witness further testified that he never had any further communications with the deceased after that time, that no difference ever arose between him and deceased, that he told deceased that he would call, but never had done so to his regret. That when he called to have the will of October executed he was received by Mrs. Morgan, who announced his coming to Miss Adams, who greeted him when he came into the room; said the memoranda given him for the preparation of the will was not in the handwriting of Miss Adams, that the will was prepared in accordance with this memoranda, books & all; that when he came to the disposition of the books, decedent told him that that was not right, that he asked her if there were many books because he
96 thought if there were not many books, it would not make much difference decedent told him it would make no difference, that it was just as good one way as the other. At this point witness was asked by the Court as to the other legacies in the will, and replied as follows: "She first directed the payment of her debts,

if any. Then she directed the payment of $200. to Mrs. Morgan for the purpose of erecting a monument. A thousand dollars to her friend Jennie G. Morgan, and in the event of her death to her husband. A thousand dollars to Mr. Morgan and in the event of his death to Mrs. Morgan. All the rest and residue of her estate, which she declared consisted only of personal property, was to be divided equally among her nephews and her niece, and they were named. I think one was Charles and the other Frank, and, it seems to me, the niece's name was Carrie. Now, that was the extent, except the appointment of the executors very brief and short. She had intended the books to go to her nephew Charles but the will gave them and the watch and wearing apparel to Mrs. Morgan and she said it was all right and that it did not make any difference.

And thereupon the caveatees further to maintain the issues on their part joined called RANDOLPH H. MCKIM, D. D., who testified, that he had been rector of Epiphany for 18 years, had known the decedent for 15 years, would see her incidentally at church, call to see her once or twice a year, and when she was sick would see her more frequently, sometimes once a month; saw her several times after she went to the Morgans', the calls lasting from 15 minutes to half an hour; saw her two or three times in the spring of 1905.

97 Witness conversed with her about church matters, her health, and would have prayers with her; talked about whatever happened to turn up in conversation. Witness stated deceased was a woman of clear intelligence; that he saw no change in her intellectual capacity upon the occasion of the last call made on her in the spring of 1905, that she conversed intelligently on different topics that happened to come up, understood clearly what the witness had to say, and stated clearly what she had to say; she spoke of Mr. and Mrs. Morgan with great affection and regard, and of the latter's kindness to her; witness observed that Mrs. Morgan was very affectionate to Miss Adams, and was very solicitous for her welfare in all respects. On cross examination witness stated there were 1,500 communicants at his church and 400 or 500 more at the chapel and that he could not make more than one or two visits a year except in case of intimate friends and of sickness, when the visits would be more frequent, that his interviews with testatrix were at church or her home. Witness said decedent never visited him in his home. On being asked to recall conversation on the occasion of his visit just before Easter, witness replied "Our conversation was on general topics for the most part" and that at his last visit, just after Easter, thinks the only thing she talked of was the Easter collection. On re-direct examination, witness testified that decedent was apt to send a contribution to the church for Easter and sometimes during the year; did not recall any particular contribution that was larger than $100.00, and added "It is quite possible though," that on one or two occasions she gave $100. and on another $50.00.

98 Thereupon the caveatees further to maintain the issues on their part joined called, JOHN DOMINIC LA MOTHE, D. D., who testified that he had been an associate minister at

Epiphany from October, 1904, and an assistant there from April, 1901, that he knew the decedent from 1901, except two years, from September, 1902, to September, 1904; that from September, 1904, up to her death he saw the deceased, probably once before Christmas, 1904, and four or five times or oftener after that, also saw her several times before she went to the Morgans'; that he discussed with her whatever happened to come up; that she was very much interested in the church, and witness was impressed that other subjects were discussed; that decedent always struck him as being interested and bright, and thoroughly understanding everything that was going on—everything that was said—that this continued throughout the visits witness made upon the deceased, that deceased always inquired about witness' family, whom she did not know but of whom she had heard witness speak. Witness further testified that deceased spoke of the Morgans with the deepest affection, that Mrs. Morgan had left nothing undone for her comfort, spoke of Mr. Morgan with real affection, and as though she looked upon him as a son. On being asked as to his impression of her mental capacity witness testified that it always seemed to him as good as anybody's else, that is to say that the question of mental capacity was never suggested to his mind, that he noted no change in her mental capacity, but that towards the last she got weaker physically and in the last weeks of her life was very feeble. On cross examination, witness testified that his calls would last fully half an hour, that the kindness of the Morgans was always spoken of by deceased, but that that
99 was not the prevailing topic; that on one occasion deceased showed him a photograph of Dr. McKim and expressed her gratitude to those who gave it to her, and that he never heard her discuss any business question.

Thereupon the caveatees, further to maintain the issues on their part joined, called CHARLES O. PIERSON, who testified that he had known the deceased for 25 years; that she was a frequent visitor to his family; the relations being very intimate. Up to three years before her death, deceased was at his house a half a dozen times a year; that he saw her two or three times in 1903; again in August or September, 1904, when he met her on the street, and deceased spoke of having found a home at the Morgans', and that how pleasantly she was situated there, that he saw her but once in 1904—not a chance to have much to say; made inquiry as to each member of his family and inquiry particularly after the son of the witness, asking witness particularly as to the prospects of the son being married, met deceased again at the Morgans' two days before her death, when deceased recognized him and that he then told her of his street car accident, that he had made a fight and that she knew of fighting stock and wanted to continue to which she replied in the same old cheery way she had of expressing herself, "That is what I am doing." Further testified that deceased had as strong a mind as he had ever met with in a woman, that she would discuss with him pretty nearly every subject under the sun, was well read, and kept up with current events, politics, religion, magazine articles,

etc. Witness did not notice a particle of change in her mental condition during the last year of her life—the last time he saw
100 her she was just as bright mentally as at any time he had known her, but noted a physical giving-away. Witness stated he heard the deceased speak of her nephew Charles, after the death of her aunt Hannah; that she spoke of Charles in the kindest manner. Witness testified that he had discussed business matters with her, her investments, etc., from what he was able to judge she was a pretty shrewd woman and seemed to know what she was doing. Witness further testified that the first thing that attracted the deceased to the Morgans was the disinterested kindness of the latter, in taking in a little child whose mother had committed suicide, and taking care of it for many years; that he had heard deceased speak of doing something for this child. Cross examination. Witness stated that the aunt Hannah of the deceased had died in 1883; that he had heard her speak of doing something for the little girl and also of doing this, that and the other for other persons; that deceased spoke of having people on her list of whom she was taking care, that he could not name anyone to whom she gave anything during the last 20 years of her life; witness further testified that the last discussion with her about politics was in 1903, that this was discussed among other subjects. Witness did talk to the deceased about expensive doctors; testatrix told witness several years before her death that her interest was reduced on her investments to four per cent., and expressed a fear to witness that this would drive her into her principal.

Thereupon the caveatees further to maintain the issues on their part joined called PERCY H. RUSSELL, who testified that the only occasion upon which he saw deceased was on the 25th of
101 October, 1904, when he called to see her at the request of Mr. Morgan; that this interview lasted about an hour; that deceased told him she wished to give Mrs. Morgan power of attorney to attend to business for her, that this power of attorney embraced 19 promissory notes secured by deeds of trust on various property, that deceased directed Mrs. Morgan to get the notes; that Mrs. Morgan handed them to witness, who would make a note of the amount, maker and date and embrace it in the power of attorney. Witness further testified that on this occasion he discussed only the business with the deceased, he only noted her mental condition as he would that of any other person with whom he had an interview for the same period of time, and that she appeared perfectly rational and sane as far as he could judge. On cross examination, witness testified that he had known Mr. Morgan 5 or 6 years & had acted as notary for him at various times, that Mrs. Morgan was present during the interview; and possibly Mr. Morgan entered once or twice, that he was not alone with Miss Adams at any time, that the decedent directed Mrs. Morgan to get these papers for her, that Mrs. Morgan on getting them turned them over to the deceased, that it was at witness' suggestion that the notes were mentioned specifically in the power of attorney; decedent she was ill and unable to attend

to business and wished to give some one power of attorney; that Mrs. Morgan had been very kind to her and she wanted to give her the power of attorney, that she assigned this as one of the reasons.

In response to question witness said she did not refer to any
102 trouble she was having with her agents, B. H. Warner Co.

Thereupon the caveatees further to maintain the issues on their part joined called Miss FRANCIADE WAGNER, who testified that she was in the Treasury Department when the deceased worked there, though not in the same bureau, some ten or twelve years ago; also knew her slightly in Epiphany Church of which both were members. Witness went to board with the Morgans, and after being there several months, beginning in March, 1903, deceased called on the witness at the Morgans', which visit witness returned at La Fetra's; thereafter would meet her occasionally in the parlor at the Morgans'. Witness went away from the Morgans' in the summer of 1904 and returned in October; that during her absence Miss Adams had moved to the Morgans'; that she continued to see the deceased up to one month before her death. Witness said, during the Christmas season of 1904, she stayed home from office 10 or 12 days, and would frequently sit with the deceased while Mrs. Morgan was out; that during this period she would be alone with Miss Adams for two and three hours at a time, Mr. and Mrs. Morgan being out of the house; that, in the early part of 1905, she would see the deceased two or three times a week and always on Sunday afternoons; that on these occasions she would discuss the general topics of the day, and anything that happened in the Treasury Department if there had been any new rules made she was very much exercised over the change; that deceased would discuss the new rules in the Department with the witness, particularly the rule changing the hour of dismissal to 4:30; that deceased
103 was very much exercised over it & could not see any reason for it that she also discussed with her any passing events in the Department and Epiphany Chuch; that witness expressed a desire to have Dr. McKim's photograph; that she expressed great pleasure when it was given her and told Mrs. Morgan to take another picture off the mantel, the subject of which had a tendency to infidelity, in order that Dr. McKim's picture might not be contaminated thereby; that witness repeatedly referred to Dr. McKim's visits, and of the comfort she received from them; that she would take her flowers occasionally, which would please the deceased very much; that she spoke of the Morgans with the greatest affection; speaking of her as 'that dear little woman,' and would become nervous when Mrs. Morgan would be out of the house; that when Mrs. Morgan would be upstairs in witness' room and would scarcely be in the room before deceased would come to the foot of the stairs and signal to Mrs. Morgan by a cough to come down. On being asked what the Morgans did for her, witness replied Mrs. Morgan would do everything for her, and would stay at home with Miss Adams in the evenings instead of going out and enjoying herself; that Mr. Morgan was devoted to the deceased that she would speak

of him as her son he would stay in the room with her, care for her, and read the newspapers to her; never heard deceased speak of her relatives; it was no occasion for her to do it. On being asked as to her mental capacity, witness said 'She was an average intelligent woman, bright as to her conversational powers and intellect—always remembered everything that had been said to her, seemed to take an interest in all that was going on socially. That
104 this condition continued up to the last time witness saw her in May 1905. Witness further testified she thought that deceased had a very strong will power; that if she did not want to do a thing she would not do it. On cross examination, witness testified that her judgment as to her will power was based on the deceased's very often getting out and going about when witness would tell her she ought not to go out, but deceased would go and would say 'I know what I ought to do.' On being asked further as to what Mrs. Morgan would do for deceased, witness replied "Why everything, just as a daughter would attend on a mother * * * just as witness would do for her mother and sister." That Mrs. Morgan nursed the deceased when she was sick and that the picture she thought might contaminate that of Dr. McKim was that of a friend which she had on her mantel.

Thereupon the caveatees further to maintain the issues on their part joined called R. M. Ellyson, M. D., who testified that he attended the deceased a few days in October, 1904, while her regular physician, Dr. Atkinson, was away, saw her again in consultation on the 21st and 22nd of June, 1905; that he made four or five visits in October, at first she was in bed, but before his visits ceased she was up and around the room, that he was called in for stomach trouble; that he would ask her the usual questions a physician would ask a patient and that she answered them intelligently; that sometimes he would have a little chat with her about other matters besides which he had no conversation with her. Witness
105 thought her mental capacity was perfectly normal, noticed no sign of any weakness in her mental condition, she seemed bright and full of life, and would make a little witty remark, now and then; that she always spoke of Mrs. Morgan as 'dearie' or 'dearest,' spoke of Mrs. Morgan very lovingly. Witness also noted the attention of Mrs. Morgan to the deceased. When witness called in her last sickness in consultation which was June 21 & 22 said deceased would answer the professional questions put to her very intelligently; that she recognized people who would come in to see her. On cross examination witness did not recall the exact questions he had asked the deceased, but said her answers gave him no idea but that her mental condition was all right; that the professional questions were how she felt and questions of that character; that he did not remember any of her answers; that he did not know how many people at St. Elizabeth's could answer such questions. Here witness in response to questions on behalf of the caveatee said paresis was a disease of the brain and the spinal column, in which the higher mental qualities of the patient had deteriorated; that the memory

would fail in such a person, and would be further characterized by inability to call a word for the time being; that he noted no symptoms of this being present in Miss Adams in 1904. Further testified that the average duration of the disease is about 3 years. Further testified that if deceased had been suffering from paresis four or five years before there certainly would have been symptoms of it.

106 On further cross examination witness testified that 75% of the cases of paresis die within two years, according to Dr. Chapin; that if a friend made a visit, the party does not seem to recognize him, and in a week asks that friend whether he had called, this would be a symptom of paresis. On being asked, "Suppose a person comes to you and tells you a thing and in a few minutes comes and tells you the same thing, and then tells *in* again and again, all in a comparatively short space of time, in one interview,—is that the thing that people usually do with paresis?" Witness replied that that was one of the symptoms of paresis. On being asked if a person told you unimportant things and told you over and over again not to repeat them—if that was indicative of paresis, Witness replied, "Not if the person is perfectly sound who tells me things like that, or unless it was associated with other symptoms;' The witness was further asked 'Suppose a person owning some security or business paper goes to the agent and demands to be paid the money on one day, and it is refused, and the next day goes and advised the person never to give her any money that she asked for, and thanks them for refusing to let them have it, and if they come again not to let them have it, would that be the kind of conduct that you would expect in paresis?', to which the witness replied 'Yes, they might do that.' On redirect examination, the witness was asked to indicate if there was any other disease that might be characterized by lapses of memory, and replied, 'Yes, there are different forms of mental insanity;' in response to question witness further testified that the lapse of memory, that persons of advanced years were more apt to have a bad memory; that it might be entirely dissociated from disease.

107 Thereupon the caveatees further to maintain the issues on their part joined, called WADE H. ATKINSON, M. D., who testified that he began treating the deceased professionally in September 1902, when deceased came to his office on the 12th and 13th and 24th of September, and then again twice in October 1902. Did not see her again professionally until July 1904, and again in August, 1904, saw her again at his office on October 3, 1904; *when* to see her again on October 25, 1904; saw her again on the 27th and 29th of December; saw her every day from the 27th to the 31st of December, again on January 3rd, 1905; on February 9th, 12th and 13th, 1905. Did not see her again until June 17th, when he saw her continuously until her death on the 24th. Witness testified he was called in to attend deceased for indigestion and a little asthmatic trouble; that he treated her stomach, and gave her general tonics. Testified also her circulation was not strong; said her last sickness was bowel trouble; that she died from enteritis, which was characterized by diarrhœa and dysentery. On being asked as to the subject of the conversation

with the deceased independently of the professional side of it, witness replied, "That she had a cheery way of talking and would make witty remarks. That upon one occasion he called upon her at the Morgans' witness told him that she had come with friends so that they could take better care of her; always referred to the Morgans kindly; said the diet that he prescribed for the deceased was mostly liquid, such as juices, milk, egg, orange juice and toast. On one occasion Mr. Swartzell telephoned witness if he could see the deceased,
108 that thereafter deceased told witness she did not want to see Mr. Rheem; that afterwards witness told Rheem and Hensey at their office that Miss Adams was better and could see them that this was after Miss Adams told witness she wanted to or would see them; that this was after they had been refused admittance by Mrs. Morgan; that witness had previously asked Mrs. Morgan not to let the deceased have company until she felt better. Witness further testified he would always leave directions with Mrs. Morgan, who always carried them out, and showed considerable care in the administration of nourishment. Witness was particularly impressed with the nice room occupied by the deceased, there being lots of air and plenty of sunshine. On being asked as to the mental condition of deceased witness testified that her general expressions and answers were always perfectly satisfactory; that she could answer questions and tell him her symptoms until near the end of her sickness and that the cause of her death was enteritis. Witness further testified that because of the asthmatic condition of the deceased she would become a little fatigued after exercise and would talk between breaths until she got rested. On being asked as to progressive paresis witness replied that 75% of the cases die within two years; that the disease generally attacks people about middle age or a little beyond. That there are three stages, the first characterized by tremor of the tongue, depression, etc., the latter by more excited hallucinations, such as being wealthy, extravagant expenditure of money, &c., later, loss of memory, paralysis, &c. On being asked if there were a person *room* who had a pronounced case of progressive paresis four or five years
109 ago whether he could diagnose the symptoms if he saw such a person to-day he replied that he thought such a person would be in his grave. On cross examination witness testified paresis is always progressive and that in the majority of cases the greatest length of time the disease would run would be two years; that the first stage is called the pro-dromal; that he did not think that the first stage itself, might last several years, but that he was not an authority upon the subject; that Peterson and Haines' Text Book of Legal Medicine and Toxicology, which says the pro-dromal stage may last from several months to several years is a recognized book; that the last stage of the disease was characterized by general paralysis, and a depressed condition of the patient. Witness further testified that no age was exempt from paresis; that a decreased attention to one's dress and personal appearance might be one of the symptoms; that frequent repetition of the same thing, at short intervals, in apparent forgetfulness of having said it before, was another; that another symptom might be if the patient spoke of a person on

one occasion as his nearest and best friend and at about the same time told other parties that this same person was robbing him and was unkind to him, and should tell one person that where he was staying was a very happy home and he wanted to be there, and would tell other persons that he was very unhappy there and wanted to get away, this would be in line of those symptoms, though mere lapses of memory would not. Witness was asked "If there was lapse of memory, change in attention to dress and appearance, alter-
110 nation of praise and censure, frequent repetition of the same thing to the same person—what would you say about the existence of all together being a fair predicate for a diagnosis of paresis, witness replied 'That if I had all those symptoms I would have others to confirm that diagnosis. Being asked what other symptoms he replied 'Depressed condition, quivering of the lip, thickness of speech, a general excited stage, extravagance and listening to advice would certainly show out somewhere before the other symptoms would come. On being asked if such a patient in addition to the foregoing symptoms thought her income reduced and that she would have to go into her principal and is distressed about her money matters when they are just the same as they have been all along,—would not that be an additional symptom, he replied in the affirmative. On being asked if such a patient sent her business agent a request for money which was refused, followed up by a legal power of attorney, which was refused and by a personal letter demanding it which was refused, followed by the patient telling the agent in a subsequent interview that she did not want her money at all—asked how this would fit a case of paresis, witness replied "That might strengthen it along the same line, but if there was so marked a symptom as that, I should think I would have a more marked nervous condition, which would be evident to the physician in attendance. I cannot help from taking your suppositions as applied to my patient when I was present, but that if the occurrences stated were as facts and had occurred within a few days, it would be a
111 marked symptom of some disturbance. Further testified that if in September, the testatrix asked for money which her business agent refused to give her, and that, the next day, she had come back, thanked him profusely and asked him never to give it to her if she asked for it again, and no matter how she came for it, these symptoms would look somewhat more like an hysterical lady than the other condition. On being asked, "If these things which I have described happened just about the time that you were attending her in October, there were some symptoms you failed to see, were there not, Doctor," witness replied, "There certainly were. No symptoms of that kind appeared to me." Q. "What is that?" A. "I say, those symptoms did not appear on my examination when I was present, when I saw her." Witness further testified that Mrs. Morgan had told him something — the power of attorney, something similar to what had been stated and that Mr. Rheem would not accept it, and on being asked if he had been told that this power of attorney had been presented to her agents, that they had refused to cash it, that afterwards when they saw the deceased she told them

she did not want the money at all—witness was asked if this would aid him in diagnosing the case and thereupon replied "It would have aided me to the extent of knowing that there was some disturbance with her of some character." Witness further stated that there was some conversation in his presence to the effect that Rheem would not accept the power of attorney because it was dated improperly. That it was about this time deceased said she did not want to see Mr. Rheem. Witness testified he had never for-
112 bidden deceased to see Mr. Rheem until he was told that Rheem had already been there; that it was his opinion that it was best for the deceased to be quiet and for her to see him when she was better and that this was the only occasion he had given that instruction. Thereupon counsel asked question if witness had gone to her agents in October, three squares from her room and where she had been in the habit of going for 15 or 20 years, had got lost had taken the wrong car, had gone to some park and could not find her way home, and had to be brought back home by some other person, if that would be an indication of paresis, he replied that it would indicate that there was some mental impairment. On being asked if all of the foregoing symptoms had existed six or eight months prior to October, if witness would not then be impressed that it was a case of paresis, he replied that he would still look for more evidence before pronouncing it as paresis. On being asked as to his charges he said his bill was $33.00 from July 1904, to December 1904, including Dr. Ellyson's services; that she owed him $19.00 on the 28th of November. On being further cross-examined, witness testified that the great majority of enteritis cases were among children, or among persons quite old, you might term it either in first childhood or in second childhood. Witness further testified that paresis might begin with depression and end with exaltation; further testified that deceased had never spoken to him about going back to La Fetra's. On further cross examination deceased told him that Mrs. Morgan would make her take more nourishment than she really wanted to take; that some of the articles of diet prescribed
113 for the deceased were at times disagreeable for a person to take; that even milk was objectionable to some people. On being asked as to whether deceased gave reason for not wanting to see Mr. Rheem witness replied it was because she was feeling bad, and did not want to be bothered—this was what deceased told witness. Deceased also told witness she did not want to see anybody. Witness further testified that mental capacity of deceased became involved a day or two before her death. On re-direct examination witness was asked if during the three years he had attended the deceased professionally, from the knowledge he gained from her condition both professionally and otherwise, he would be able to state positively whether or not she was suffering with paresis, witness replied "I could state positively that I did not see any line of symptoms leading me to believe she had general paresis. Witness here said he should have used the term 'progressive paresis.' Witness also testified that carelessness of dress or forgetfulness would indicate paresis. Witness further testified that the deceased told him the

Rheem power of attorney was not accepted by the real estate company—that it was not dated properly—this was what deceased told witness she had got from Rheem and Swartzell.

114 Thereupon Dr. RANDOLPH H. MCKIM, a witness who has heretofore testified for the caveatees took the stand of his own motion and not by request of counsel and detailed the following conversation had with the decedent: "Miss Adams said something to me about her will. Now, I do not know whether it was this particular will or not, for I do not know the date of it; and she remarked that she had made a legacy to Mr. and Mrs. Morgan, and that this legacy was a life estate. She then went to her drawer and drew out the will and handed it over to me, and pointed out that part of it. I read the paragraph, and said: "Well, this does not appear to be a legacy for life; it appears to be an absolute bequest;" to which she replied that that was not her intention. I left shortly afterwards, and the impression left on my mind was that she intended to correct that; but I am unable to state positively that she did say that she meant to correct it. I had many things pressing on my mind at the time, and I did not feel that it was any of my particular business; but I thought that perhaps it was due to the whole truth that I should come to this Court and state just what I have stated. Whether it is for the advantage of one side or the other I do not know; but at any rate it appeared to me that the question which was asked me I perhaps had not answered fully, That is to say

115 I understood the question namely the question on cross examination whether he recalled any particular conversation between himself and the testatrix to refer to the last one or two visits that I had paid. Now, the question might have referred to any recent visits, and at the time I could not recall whether the visit was in the month of February or the month of March. I cannot say now, but it is very possible that that visit may have been in the month of February, and may have been subsequent to this particular will.

Now, I did not read the whole will. I simply looked at that paragraph, and I do not even recall at the present time how much money was involved, what the legacy was. The only thing that is clear in my mind is that it was a legacy to Mr. and Mrs. Morgan, and that when I looked at it I said: "Well, this is not a life estate, but it appears to be an absolute estate;" and she said—that I am clear about—that that was not her intention: The witness further testified that it was his impression tho- he was not clear about it, that she stated she intended to change the will in that respect.

Thereupon the caveatees further to maintain the issues on their part joined called HOWARD C. RILEY, who testified that he was employed in 1905 in the law office of E. Hilton Jackson, attorney for the caveatees herein; that he wrote the will in typewriting at

116 the dictation of said Jackson, and accompanied him to the home of Mrs. Morgan to have the same executed; that on calling at the Morgan home they were ushered into the room of Miss

Adams and introduced to her by Mrs. Morgan; that at the time the will was executed, Miss Hicks, deceased, the attorney, and the witness were in the room; that the will was read to the deceased as witness recollects it by the attorney; that there was no discussion as to the will by the deceased except that she said it was her will after it was read over to her in the ordinary manner, slowly. On this occasion the deceased was sitting in a rocking-chair, was rather feeble, that when she signed the will she got up and walked across the room without assistance, that she signed the will in the presence of the witnesses without assistance, requested witness to sign saying it was her will, that after the will was executed testatrix made some reference to her life in the department which witness does not remember that she impressed the witness as being as intelligent as any person and as understanding the situation as well as any person could. On cross examination being asked as to this last statement witness replied, did not remember her conversation except that her replies were prompt and her statements were clear; that he remembered nothing that she said; the deceased and Mr. Jackson were talking about her life in the department & that he does not know how that subject came
117 up; that witness waited for about 15 minutes in the parlor as another witness, a dentist was expected, some one having gone out after him; that Mrs. Morgan told witness they had sent out for the dentist; that possible the way the execution of the will occurred was, Mr. Jackson asked her if it was her will and signature & if she wished the witness to sign it and she answered yes and that he and Mr. Jackson were introduced to testatrix by Mrs. Morgan.

Thereupon the caveatees further to maintain the issues on their part joined called Mrs. WILLIAM H. WOODCOCK, who testified that she was one of the witnesses to the will, to wit, Julia Hicks, since married, that she met the deceased through the Morgans; that she signed the will as a witness was in the presence and at the request of the deceased, also in the presence of Mr. Jackson and the other witness Mr. Riley. Witness further testified that about three weeks while the deceased was at the Morgans', she was also there for some time in May as an occupant of the house. Prior to this time witness lived right across the street, and ran in and out frequently to see Mrs. Morgan. That she did not continue to see her until the time of her death, because witness removed from the city in March the year she died. On these occasions would run in to see the deceased, when witness would see her sometimes alone, that when she saw Mrs. Morgan she would usually see Miss Adams. Her visits would not last
118 long; that she would always ask deceased how she felt and talk with her in a casual way. Deceased would ask about the little girl of the witness of whom she was very fond. Deceased was particularly fond of this little girl because her name was Julia, never forgot to inquire about the little girl when the witness called, also recognized the little girl when she would call. Said deceased was very fond of the Morgans; that Mrs. Morgan looked after the deceased without assistance. Deceased was just as bright as she could be; was always pleasant and would talk about things in general.

On cross examination testified that the deceased had never spoken to her about getting lost in the streets, and witnesses never knew of that; that witness was at the Morgans' as a lodger at the same time that deceased was there in 1905; that she went to housekeeping in May, 1902, that the time she was at the Morgan house with the testatrix was in March 1905.

Thereupon the caveatees further to maintain the issues on their part joined called DECATUR MORGAN, who testified that he met the deceased first in the latter part of April, 1898 at La Fetra's, where he went with his wife immediately after their marriage. Were thrown with her accidentally at the dinner table, on the first Sunday and were introduced by Mrs. La Fetra; witness took all his meals at La Fetra's and saw deceased several times a day, sometimes after supper in witness' room where deceased would call. Wit-
119 ness further testified, after being at La Fetra's a year, he and his wife went to 1015 L Street, N. W., where deceased visited frequently; that these calls were returned by witness and his wife, particularly by his wife. After being at the above place five or six months witness and wife moved to 10th and K Streets, N. W., and then to Grant Place, N. W., that in November 1900 they moved to their present home 1008 H Street, N. W., that at these different places the above relations between the deceased and his wife continued, that deceased was apt to be calling on his wife on Sundays and frequently in the evenings when he would see her. She continued to call on them after they went to 1008 H Street, when the weather was warm, there was hardly a day that deceased did not call. After going to 1008 H Street, witness never called on deceased. Within a month before deceased came to witness' home to live, she was there virtually all the time, coming before they would get through breakfast, and staying practically all day, almost always, coming back after and staying until 9 o'clock at night. About this time deceased said she would like to come and occupy two rooms for the summer, that a lady had just vacated; that witness and his wife did not think favorably of this arrangement at first but she kept coming and was there virtually all the time. About this time on Sunday afternoon he and his wife were returning from the Cathedral services and found deceased in the vestibule sitting on the little narrow strip, waiting for them, deceased saying she had got ashamed of sitting on the steps as people would see her there and had come inside of the vestibule. It was a hot day the de-
120 ceased was almost exhausted, and witness had almost to take her in his arms and take her in the parlor, so then witness told his wife they might just as well let deceased come to the house as she was practically there all the time, and they were having most of the care and she was paying other people for that care; that he and his wife were keeping roomers. Testatrix came to the house to live about the first of July, occupying at first two rooms on the second floor. Deceased occupied these rooms for about two months when witness and his wife gave up their room on the parlor floor to the deceased; that about this time Miss Adams overheard wife

of witness say she would like to or was going away for the summer, and thereupon went to La Fetra's, and engaged her old room back and she also said there was only one window to the South in those two rooms, and that she did not get sunshine enough. Thereupon deceased came downstairs and occupied the room back of the parlor, witness and his wife having told her they would give her that room, with a Southern exposure and six windows, but the deceased expressly stipulated that witness and his wife were to occupy the room as they had done with the exception of sleeping, keeping their effects, etc., in the room. Deceased occupied this room up to the time of her death, witness going in there to black his shoes, comb his hair, etc. On another occasion, deceased engaged her old room back at La Fetra's because some of witness's effects were being moved out of the room, which gave deceased impression that witness and his wife were going to move upstairs. Afterwards deceased found this was not the case and remained. Deceased then explained witness and his wife were going to leave her. On another occasion deceased made arrangements to go to La Fetra's because she
121 was dissatisfied with her rooms upstairs.

Thereupon RANDOLPH H. MCKIM, D. D., took the stand and asked for the privilege of supplementing the statement he had made on the previous day and testified, as follows, "Now, yesterday afternoon I was asked a question which I could not answer, namely, as to the date of the visit which I paid to Miss Adams, when — showed me her will and discussed it to a certain extent. I am not able now to give that exact date, but I am able to affirm positively that the will which she showed me upon that visit, whether it was in the latter part of January or the first part of February—that will is not the will which is now in question before this court and jury. The reason I am unable to identify, or to make that affirmation positively is that, reflecting carefully upon what transpired, I now recall that I said to Miss Adams, after looking over the will, "I am sorry that you have not remembered the Epiphany Church." Now the present will which I have—it does remember Epiphany Church. It leaves a legacy of $250.00 to the endowment fund of Epiphany Church. Consequently it is perfectly certain that the will that I then saw, which did not contain that, is not the one that is now before the Court. Well, now, yesterday morning I stated that, in my belief, Miss Adams was of sound and disposing mind during the various visits I paid to her, and I want to say that the fact which I yesterday afternoon stated, namely, that she said to me that the leaving of this legacy to Mr. and Mrs. Morgan as an absolute gift instead of a life estate—she said that was not my intention. Now, I want to say that that does not shake my confidence——"

The COURT: "You need not reiterate your opinion which
122 you have expressed as to her competence to make a will."

The witness: "I thought very strongly——" The Court: "It is all right to state that, but not to make an argument." By Mr. Jackson: "Doctor, you have just stated that you noted that, in the

will which you actually saw, there was no allusion or provision, rather, for the church?" Witness: "Let me correct that. I am not sure that I noted that in the will, because I am not sure that I read the will through but I do know that that point was developed in the conversation, and that in consequence of that I did say to Miss Adams, "I am sorry you have not remembered Epiphany Church."

Q. "Do you remember saying anything else to her concerning her remembering the Epiphany Church?" A. "Anything else?" Q. "Yes." A. "No, I don't think I do, I said 'I am sorry you haven't remembered Epiphany Church.' Now, I might have said, 'It is still possible for you to do so by a codicil.' I don't recall that. Possibly I may have done that. On cross examination witness stated he was positive Epiphany Church was not mentioned in the will he saw; he became aware of the fact either by reading it or by Miss Adams telling him that Epiphany Church was not remembered. Being asked whether if as a matter of fact, Epiphany was mentioned in the will, and the testatrix simply mistaken in telling him it was not, he could tell whether the present will was not the will he saw, he answered that he could not, but that he was sure he would not have that positive conversation with the deceased without satisfying himself either by inspection or otherwise that that was the case, to wit, that Epiphany was not mentioned. Wit-
123 ness was unable to identify exactly when this visit occurred; that he had a visit noted the 10th of January, but was unable to swear whether that was the occasion.

Thereupon DECATUR MORGAN took the stand and resumed his testimony as follows: After being asked what he heard decedent say about withdrawing her principal, from her agent, testified that deceased got exceedingly nervous over the Waggaman failure which occurred in August 1904, and told witness she wished he would get all her money into a bank; deceased read all about this failure in the papers, told witness a friend of hers, Mrs. Malone, lost every cent she had through the Waggaman failure and deceased told witness that this hastened the mental collapse of Mrs. Malone, who afterwards became crazy. Deceased further told witness that she hated to think but that she was being treated all right by her financial agents, but said others had equal confidence in Waggaman; that he knows the power of attorney to his wife was of testatrix's own volition; she told witness she wanted some one to attend to her business. After Rheem called to see deceased, which was subsequent to the power of attorney to Mrs. Morgan, and his refusal to acknowledge it, deceased told witness that she was not feeling like attending to business, did not care to see Rheem on that occasion, and that her doctor had told her it was not well to see anybody at that time. Referring to the second call made upon the deceased by Mr. Rheem, deceased told witness who was not present, that Rheem urged her to let him continue to handle her money, and assured her that he had the best of security, that there were no notes
124 of office boys or janitors, and that it was first mortgage on real estate. Deceased also told witness that she assigned to Mr.

Rheem as a reason for giving this power of attorney that was given because he had sent her word that she was sick and seldom got to the office and ought to have some one attend to her business; that Rheem told her he refused to recognize it because there was error in the date and that there was an additional reason, but he was not sure whether she told him that one or not. On being asked as to whether the witness or his wife received any money from the deceased aside from board, witness testified that in June, 1904, deceased told him she had given his wife $500.00, and bound both himself and his wife to profound secrecy; that again in July of the same year, deceased told witness she was going to give his wife an additional sum of $1,000.00 which she also instructed him to keep a profound secret; that there were no other occasions, to the knowledge of the witness except some small sume of which he knew nothing except she told him ten "15 & 25 and one $50; that deceased had never given him anything, nor had he ever asked her for anything she spoke of these two gifts on several occasions and seemed to feel good over it; On being asked as to the attitude of witness and his wife towards the friends of the deceased, when they would call on her, witness replied that on many occasions she entertained them in the parlor, on other occasions, they were invited into the parlor, until Miss Adams was ready to see them, when they were ushered into her room. Witness further testified that, on one occasion, Judge Doan called at the house about 8:00 or 8:30 p. m., that witness and his wife being old friends of Judge Doan
125 supposed the visit was to them, that Judge Doan made inquiry about Miss Adams, but did not ask to see her, and was then told that Miss Adams had retired, and informed him as to her state of health; that Judge Doan and his wife called again one Sunday evening, that on this occasion witness and wife went to church, leaving the Judge and his wife with Miss Adams, in the parlor, having requested them to remain as long as they could with the deceased. Witness further testified that in October, 1904, deceased asked him to get his attorney to prepare the will, and witness insisted that deceased get her own attorney, whereupon deceased replied that she felt a little embarrassed, that her attorney had already written so many wills for her, and she preferred to have witness' attorney, of whom she had heard witness speak in connection with a long and tedious case in court, that thereupon, at the instance of deceased, witness went to see her old attorney, Mr. Lichliter, and as a memorandum for him they took the old will interlined with notes of the deceased; that he knew nothing further about this will, and was not present when the same was executed; that he did — know whether he gained knowledge of the provision for himself in the memorandum or from Miss Adams; she told him she had left him a small legacy, and something to his wife, too; that afterwards deceased told witness that legacies in said will were provided for both himself and wife; that deceased spoke to him again about getting his attorney to prepare the will of February 11, 1905, that he again suggested that she get the same attorney, but deceased persisted, as she

wanted to name witness the sole executor in that will, whereas
126 her attorney was a joint executor in the October will, and what little commissions were to be made out of it she would rather for witness to have; that he then proceeded to get his attorney; that he took a memoranda, all the essential parts of which were written by Miss Adams to the attorney's office, that he did not know what had become of the memoranda. Thereupon counsel for the caveatees stated that he prepared a will from such a memoranda, in whose handwriting it was he did not know, that he took the same with the will and turned it over to Miss Adams with the will when the latter was executed. The witness further testified that he went over the will at Mr. Jackson's office after it was prepared, assisting him in comparing the same with the memoranda, that he knew generally all that was in the will, and that he went over it with his attorney. On being asked what influence he exerted or attempted to exert upon Miss Adams with reference to the making of a will in his favor, witness stated, he answered that when she was with them, he always tried to do the best he could for her; that they nursed her and often sat up all night, or he one half the night and his wife the other, that when she didn't need any one to sit up with her, they were always on the alert and that he never had any conversation with the deceased as to the making of a will, other than what he had already stated. On cross-examination, witness said the deceased told him on the evening of the day the October will was executed, that he and his wife were beneficiaries, and that he thanked her for it, that he did not know anything of the contents of this will before, as instructions he took to Mr. Lichliter were sealed; that witness was an executor in a prior will of the deceased of
127 1902, or 1903, jointly with Mr. Lichliter. On being asked why he insisted that deceased should send for Mr. Lichliter for the October will, testified that he did so because Mr. Lichliter was competent and that it was his idea that the man who had been attending to it should continue to do so, and insisted she should get her old lawyer, because he didn't think it was necessary for a change; he saw no reason why he should be changed, that the instructions to Mr. Lichliter were contained in a large envelope with B. H. Warner & Co.'s name on the back; said that deceased told him she burned the will made prior to October, 1904. Witness further testified that deceased knew nothing about his attorney Mr. Jackson, except what she had heard from witness and his wife; deceased also insisted upon getting the attorney for the witness for the February will because she expected to drop Mr. Lichliter as one of the executors; also that she wished the witness and wife to get any commissions that might be made from the executorship; that she gave him the note to take to Mr. Jackson; that the object of the second will was to leave Mr. Lichliter out and make witness sole executor, and to leave a legacy to the church; that deceased had told him that she had given him $1,000.00 in the Lichliter will for all time that she didn't say anything about the character of it, but he inferred it was absolutely. Deceased paid $35.00 a month for her board, the same that she paid at La Fetra's. It might be a week or two weeks

after witness and his wife came home and found deceased sitting on the vestibule steps, exhausted, the deceased came with them to board;
that prior to that time deceased had spoken about wanting
128 to come to the Morgans' to live. When deceased gave his wife
$500.00 she told witness she expected sooner or later to get sick and have to be taken care of, and that this was before she had decided to come or they had decided to take her. Witness was reluctant at first about giving the deceased any encouragement because the little excitement she got at La Fetra's might be beneficial to her. Said he and his wife were in the business of letting rooms to lodgers but never cared about having sick people, invalids, and that they only took deceased as a lodger because they had agreed to do it if she got sick. In May or June previous to her coming deceased used to come to the house every day in the month, was about as well then as she had been during witness' acquaintance with her. Power of attorney was given to witness' wife because the idea was that when these notes fell due there might be some one in case of her illness to see whether the notes would be renegotiated or put in bank, or to look after the securities that were being taken for the money, and that this was what his wife was to do. Being asked what experience his wife had in such matters, replied that she had none. On being asked as to the effect of the Waggaman failure witness replied that it seemed to worry Miss Adams, that she spoke of this constantly, and therefore when these notes were to be negotiated by this power of attorney the deceased intended that the wife of the witness who had never had any experience of that sort should pass upon the advisability of re-negotiating the loans or having the money placed in bank to the credit of decedent. Witness further testified that after the papers and securities belonging to the decedent were got from
the box of the trust company, she kept them in a little metal
129 box in her trunk, and kept the key to the box around her
neck or in her personal apparel, and that she never told him why she gave up the safe deposit box where she had kept them for 14 years. Witness never saw these notes until an inventory was made of them after her death and had not noticed they were endorsed in blank, so any one could use them. Witness recalled a check of $50. that deceased had given his wife at Christmas, 1904.

At this point the following draft or order was identified by witness as being in the handwriting of his wife and the signature in the handwriting of Julia M. Adams and was thereupon offered and admitted in evidence, as follows:

"1008 H ST., N. W.

B. H. Warner & Co.

GENTLEMEN: I would like to have some Xmas money. Will you kindly let me have this amount extra this month and oblige,

JULIA M. ADAMS.

Dec. 19, '94."

Thereupon the following draft identified by the witness as being in the handwriting of Jennie G. Morgan and signed by Julia M. Adams was offered and admitted in evidence.

"WASHINGTON, D. C., *Dec.* 19, 1904.

B. H. Warner & Co., Real Estate, Loan, and Insurance.

$50.00.

Pay to the order of Jennie G. Morgan Fifty Dollars.
JULIA M. ADAMS.

To B. H. Warner Co., Washington, D. C."

Endorsed: Jennie G. Morgan.

130 Thereupon the caveatees further to maintain the issues on their part joined called JENNIE G. MORGAN, who testified that she was married on December 3, 1898, and went to La Fetra's and were introduced to Miss Adams by Mrs. La Fetra and sat at the same table with the deceased. The fact that the deceased was a member of the same church with the witness brought them into close relation. Deceased took a fancy to witness and invited her to her room, where witness would go most every day. In the evenings deceased would come to her room. This continued until witness moved to 1015 L Street, remaining there five or six months, during which time deceased would call to see her about once in two weeks or ten days; thereafter witness moved to 10th and K Streets, where she remained three months, the relations between her and deceased continuing during her stay there; then witness went to No. 12 Grant Place, where the deceased called on her often. From there witness went to 1008 H Street, where she has lived since; the relations with Miss Adams continuing. In the winter on account of bronchial trouble deceased could not get out, but witness went to see her at La Fetra's on a week and sometimes on Sunday morning to give her the notes of interest in the church; Witness further testified that deceased during the months of May and June 1904, would be at her house all day long coming before they would get through breakfast. Said deceased was perfectly at home at her house, that they left the latch out and she could come in. About this time deceased asked witness "Why don't you ask me to come to live with you?" Witness replied, "Why, Miss Julia, I never thought of such a thing."

131 And further expressed her opinion that witness was apparently contented at La Fetra's, to which deceased replied that it was noisy there, and added, "I am old and sick, and I need a home, and I need some person to take care of me." Witness did not commit herself at this time, thinking that it was a passing notion, but deceased clung to the idea; that when Mr. Morgan came in, the deceased further persisted in her desire to live with them, whereupon Mr. Morgan said, "Why I guess it would be all right, Miss Adams." A week from that time deceased was in the house. On being asked as to whether the deceased ever spoke to her about changing her quarters to La Fetra's, witness replied, "The first time she overheard me discussing going away with a friend, and this friend said to me, 'I thought you had gone;' I said I can't go, I have an old friend here that might get sick, and I couldn't think about going away and

leaving her here with Mr. Morgan." Deceased overheard this conversation and being impulsive and quick she went around to La Fetra's and engaged a room immediately. Later in the same day witness noticed that something was the matter with the deceased and indicated her thought to the deceased who replied, "You haven't treated me right," and added, "You have made all your arrangements to go away for the summer and let me come here and upset your plans, and I am going back to La Fetra's and then in the fall if you want me I will come back." Witness replied, "I am not going, I didn't want to go anyway * * * I am very glad you came, you gave me an opportunity to get out of it." Thereupon the deceased she told her she had engaged a room at La Fetra's, "Dearie, I am very sorry; I have been now and engaged the room." Witness put no obstacles in her way, and thought if she wanted to go it would be much better
132 for her to go. On another occasion deceased engaged the rooms at La Fetra's and told witness about it, and said she would have to leave her. Thereupon witness said she was awful sorry but that deceased should do just what she wanted. Thereupon deceased said there was one condition upon which she could stay, and that was that witness and her husband give up the room back of the parlor which they occupied as their sleeping apartment. Witness consented to do this but deceased insisted that all the effects of witness and her husband should be left there and further that they sit in the room and occupy it, except for sleeping and asked witness not to go very far away from her at night, and added "I cannot be alone at night." Witness replied, "We will do that, Miss Julia, we will put a folding couch in the parlor," which was a few feet from the back of the room. Deceased then told witness she had engaged a room at La Fetra's, and witness wrote a postal card to La Fetra's countermanding the order for a room, but was not positive whether the postal was written on this occasion or on another. On another occasion, the last time deceased got miffed, witness was taking some surplus winter wear out of deceased's room and a chair or two in order to make her more comfortable. On the strength of this, the deceased went to La Fetra's and engaged a room and later came to her almost crying and said she had to leave; that witness said "Are you going to leave me again?" she couldn't help but laugh; and added that testatrix replied "Yes, I won't stay here if you won't stay here in this room." Deceased then explained to the witness she had got the impression that witness and her husband were going
133 to move up stairs, because Mr. Morgan's boot case had been taken out of her room, so witness got the boot case and took it back to her, and she said, "I feel ashamed of myself" and would never do it again.

On being asked as to her knowledge of the deceased with Swartzell, Rheem & Hensey, witness replied she would sometimes go to their office with the deceased—this was in September, when deceased was quite sick—and witness did not think it safe for her to go out alone. In September witness went to the office alone for Miss Adams, presented an order for $50.00 drawn by the latter and was handed a check for the amount, which was turned over to the deceased.

On one occasion witness carried to the office a note for Miss Adams requesting that certain notes which were about to mature be not renewed, when witness was told at the office "They are not due," and replied that she knew this to be so and that this was just a proviso against renewal. On being asked as to the power of attorney of October 25th, 1904, witness replied that the occasion was a very humiliating one; that deceased told her she was old and sick, did not know how long she was going to live, didn't know that it was wise to have her investments renewed, spoke of the Waggaman failure, which upset her completely, in which some of her friends had lost every cent, and added, "I might be in the same boat." Witness further testified she discussed it (meaning the Waggaman failure) morning, noon and night, would get the paper and read it; there were six or seven of her friends who were ruined by it, both people at La Fetra's and in the office. Among these friends wit-
134 ness recalled the names of Mrs. Malone and Mrs. Fitzpatrick; that it crazed Mrs. Malone and it about crazed Miss Adams, she felt she would have to have her money out of it; that witness rather thought this was the principal reason why she wanted the principal withdrawn from her agents. On being asked what she had to do with the execution of the power of attorney, witness replied she assisted Miss Adams up in the bed and put pillows behind her; that at the instance of the deceased witness went to her trunk to which witness had the key and got out a tin box where she kept her securities and handed the same to the deceased who unlocked it with a key which was around her neck. This key deceased kept around her neck all the time and with it unlocked the box on this occasion, that thereafter she and Mr. Russell had this conversation, and witness never heard a word of it, because she thought it would be impolite to do so. After Mr. Russell left the room deceased told witness to take the power of attorney next morning to Mr. Rheem, which witness did, but Rheem declined to recognize it, said it was not dated right, and further that he had orders not to recognize Mrs. Morgan with the power of attorney; witness returned and told Miss Adams and said she would rather that Miss Adams would get some other person to act as power of attorney, because it was humiliating to her to go down and have her word doubted and she wanted nothing to do with that firm because witness had been insulted; that deceased felt very much insulted and made witness sit down and write a letter to her agents which was signed by Miss Adams; that testatrix read the letter herself, that she had good eye-sight,
135 better than witness; that shortly after this letter was written Mr. Rheem came to the house to see Miss Adams and that Miss Adams said she did not wish to see him; that deceased rushed out of the parlor into the dining-room as quick as a girl 16 years old, witness saw she was awful excited and knew it would never do in the world to let Mr. Rheem see her then, and stated to Mr. Rheem when she went to the door that Miss Adams was not in condition to see him that day, but told Mr. Rheem he could see her in a few days; also told Mr. Rheem she was acting under instructions from the doctor, that it was just against the doctor's orders,

and she was awfully excited; and witness knew it would never do in the world to let him come in then, and she met him at the door; witness further testified that Mr. Rheem asked her for the address of Miss Adams' nephew, to which she replied, "I must decline that, because Miss Adams don't care for her nephew to have anything to do with her. Then witness then went to the doctor. Subsequently witness was in Mr. Rheem's office with a check for the deceased which he did after two or three weeks, in company with Mr. Swartzell; that on this occasion the witness remained in the room because requested to do so by the deceased; that there was some discussion as to the renewal of the Blundon note which deceased had asked witness several times to tell them to send to her, and that Mr. Rheem suggested that she had better let them renew it; that deceased told him not to and further stated she had some other notes coming due and she did not want these renewed, but wanted them put in bank; that they (meaning Swartzell and Rheem) urged her to let them renew these notes and suggested that they had been conducting her business for the last 20 years satisfactorily and further promised that
136 if she would consent to this they would advance her all the money she needed for her expenses, but was too courteous to tell them that; witness being asked as to what was said about the nephew's address, replied that when the witness brought the matter up on this occasion the deceased became indignant and said "I don't want my nephew to have my address, he has nothing to do with my business, he is in Connecticut and I am in Washington, I am fully capable of managing my own business;" that thereupon Mr. Rheem smoothed the matter over. From that time on Miss Adams continued to transact her business with this firm; that witness continued to go down and get the drafts drawn on the deceased cashed until Mr. Rheem suggested he would send to Miss Adams a form of a check which she could make out; that Miss Adams would sign these checks which were filled out by the witness; that the deceased suffered with rheumatism in right hand and wrote with difficulty; Witness would take these checks or drafts to the office and present them to the bookkeeper who promptly honored them—all that were presented—and did so until the 14th of June, when the last draft was presented. On being asked about the safe deposit box of the deceased in the Washington Loan & Trust Company, witness said that deceased some time before she came to her house to live asked witness for the privilege of giving her authority to enter the box, that if she were taken sick at La Fetra's, she could not get to the box; that shortly thereafter witness accompanied deceased to the trust company and told those in charge that she wanted the witness to have the key to her box and the right to come to it when she was sick, that when she was well she would come herself. On that occasion the gentleman
137 in charge of the box prepared a power of attorney which deceased signed and witness signed as a witness. Witness never went to this box in pursuance of this power of attorney, but subsequently carried an order written by herself and signed by the deceased which order gave her the authority to withdraw her papers or securities from this box. Witness got the papers or securities and

took the same home immediately and gave them to Miss Adams, who put them in the tin box in her trunk, that to comfort her witness told her she could put them back afterwards, and she said "I will do that." In response to question of the court, witness stated deceased had this tin box before she came to her home. On being asked to state the circumstances of any gifts made to her by the deceased, witness replied, as follows, "The $500.00 was the greatest surprise I think I ever had in my life. * * * Deceased said 'Dearie, I want you to have this; here is a little present I want you to remember me by.'" Witness replied, "Miss Adams you are certainly generous * * * this is the last thing in the world I ever expected." Deceased added, "If anything ever happens to me, you will have something." Witness further testified deceased gave her $1,000.00 in July after coming to her house; that deceased went herself and got this money, witness not knowing anything about it. Q. "What did she say when she presented that to you, Mrs. Morgan?" A. "I ran upstairs for something, and she says: 'How long before you are coming down?' I says: "I will be down in a few minutes." She said: "I have got something here for you." "Well," I said, "I will
138 come down right away." I didn't know what it was, don't you know, but, with womanly curiosity, I went right down, and she said: "I have got some money here," and she brought the money in, and she didn't give me no check or no nothing; she brought the money.

Q. "You were agreeably surprised?" A. "Well, I was so overcome that I cried, I could not help it, I thought it was so sweet and lovely of her. I said "Miss Adams, why do you give me this?" She said "Because I love you. I would rather you would have it than anybody else." Q. "Did she say anything to you at the time she gave it to you?" A. "She said: "This is for you to keep forever." She would not let me discuss it. "But," she said, "It is all right; I feel better now." Q. "Did she say anything to you about not telling it?" A. "Oh, she did; she said: "There is only one provision I make about this, and she said "Never tell anybody; I don't want people to know my business." Q. "You are telling it now." A. "Because I am under oath, and I suppose I have to."

139 Witness further testified the largest amount deceased ever *have* her besides the above was $50.00, on December 19, 1904, which was given to the witness as a Christmas present, and deceased instructed witness to buy her something out of it, too. That she was a very generous-hearted woman, very. That the note addressed to Swartzwell, Rheem & Hensey, and written by the witness, at the request and dictation of the deceased who signed it, was taken down to the office by the witness with check, and that the money was paid to the witness. On other occasions deceased *have* witness money ranging from $5.00 to $15.00 and so on. On witness being asked what money deceased had given to the church, she said on one occasion deceased sent $400.00 on Easter Sunday, by the witness; that she was always taking money to the church for the deceased at Easter and the diocesan missions; that there was never anything going at the church that the deceased did not contribute

to most liberally, that on one occasion the deceased said: "I can't go in the church and work, because I haven't the strength, but I can give my money." Said deceased told her she had sent money to her nephew and had also given money to some friends; that she gave money to a Mrs. Carmick, who she said was always asking for money when she came to see the deceased. On witness being asked what experience she had in business she replied, she had assisted her father and her husband in keeping books, both before and
140 after marriage, and that she had had no other business experience. On being asked as to whether in connection with the $500 and the $1000 gifts, she discussed business affairs of herself and husband with the deceased, she replied that she did not talk of them to testatrix, but would do so in her presence that they lived in Miss Adams' room which was formerly theirs, that they would sit and talk over her husband's business, if it was dull or if he was busy, or worried about it, and added we had no privacy to keep from her, and we would sit there and talk before her. She would not say so much before Mr. Morgan, but after he went out she would ask me questions and things like that * * * She was at his place of business frequently—at 9th and H—the wall paper business and it was about that business that she would talk. I used to say that I wished he was out of it and that she used to wish he was out of it."

On being asked what she knew about any wills that the deceased executed, witness replied she accompanied the deceased on one occasion to Mr. Lichliter's office and witnessed a will which was executed there, that she knew nothing of the contents of this will and nothing of the contents of any will, prior to the deceased coming to her house; that during her acquaintance with the deceased the latter made six wills. Witness further testified that deceased told her she had made a will previous to coming to her home and remembered her sister Mrs. Barnum, who died a day or two before deceased came to her home; that the testatrix said she didn't care anything for this sister which seemed unusual; that
141 this sister had an adopted daughter and deceased determined that this adopted daughter should have none of her money, and said on one occasion, "Unless I make another will this Maggie Barnum will get what I left to my sister and I don't want her to have it." At this point witness suggested that she could make another will, but deceased said she was unable to go to the lawyer's office, whereupon the witness suggested, "He will come to you," to which testatrix said, "I never thought of that, I wonder how much he will charge?" that witness said, "They won't charge you so much," and testatrix answered, "I don't care what they charge, I want this will fixed." Witness knew a memoranda for this will was prepared and sent to Mr. Lichliter but was not positive as to whether she had prepared it, but thought she had done so because the deceased was sick, in bed at the time. Witness further testified that when Mr. Lichliter came she let him in, and took him to Miss Adams, that Mr. Lichliter ordered her out of the room and that she stayed out; that afterwards she did not know at the time what

provision this will made for her husband and herself, but did later on; that she is almost certain she prepared the memoranda for it; that she did not know whether that will contained the memoranda that she had prepared, that deceased told her afterwards what the will contained. On being asked what she heard the deceased say about the will of February 11, 1905, witness replied deceased told her she was going to make another will and remember the church, because Dr. McKim had suggested it, and also said "I am going to do better by you, dearie." The deceased also told witness Dr.
142 McKim knew the contents of the previous will, and that there was no provision in that will for the church. Witness further testified that deceased prepared the will of February 11, 1905, herself that she had rheumatism in her right hand and was a day and a half writing it and copying it and making changes from the old will; that this memoranda was taken down to Mr. Jackson by Mr. Morgan, who was instructed by the deceased to bring the memoranda back; that deceased burned up this memoranda when he brought it back; witness saw her burn it up, that she was particular about burning wills up; witness further testified that the deceased took charge of the will of February 11, 1905, put it in the tin-box and locked it up. Kept the key to the box around her neck. Witness never saw the will after that time. Witness further testified that the Doans called in the spring of 1905—Judge Doan and his wife. Once before that time Judge Doan called but they took the visit to themselves; this was in the fall. Before he left he inquired for the deceased and was told that she had retired for the night. On being asked as to what was the practice of the witness when friends of Miss Adams called witness replied, she made it a point to have Miss Adams feel perfectly at home and free to come and go. Once when she was ill witness sent her friends a notice or telephone message. Witness made it a point to have her friends still continue to visit her. Once Miss McKnew called and the deceased declined to see her; with this exception her friends were always seen. Referring to the call of Mrs. Van Wickle, witness said she took the latter in and introduced her to the deceased. Witness was told by the deceased to sit down, but she replied 'I
143 guess your friend would like to talk to you.' Said she was in and out of the room during the call of Mrs. Van Wickle. The latter brought deceased some flowers, which witness by instructions of deceased took in the parlor. The deceased appreciated flowers, but they were too strong for her in her room. Witness was in and out of the room, but did not notice that the conversation between Mrs. Van Wickle stopped. Referring to Mrs. Carmick witness said she called five or six times while deceased was at her home, prior to the last week of decedent's life. Further testified that Mrs. Carmick would always see deceased alone although deceased insisted *insisted* upon witness staying in the room. Witness further testified that deceased had only two real illnesses while she was with her, one in September, and the other her last illness. Witness further testified that she knew Miss Ella Scott who generally called on deceased at the home of witness in company

with Mrs. Hughes. Witness was not generally in the room because they would generally come at her dinner hour and she would leave them to entertain deceased while witness was at dinner. Being questioned about the little souvenir vase referred to in the testimony of Miss Scott and Mrs. Seawell witness testified that it was a little silver cup and not a vase, which she wanted the deceased to use for her food, as she thought it was better than the little china cup, which would soon cool off. Deceased told witness she wanted that cup for Mrs. Hughes and afterwards told witness she had sent it to Mrs. Hughes. Witness testified she had told her not to do it as she wanted her to use it for herself. At this point the attention of the witness was called to the paper of May 1902, hereto-
144 fore offered in evidence and was asked the circumstances of its preparation and delivery to the witness. Whereupon witness testified there was a lady friend of the deceased boarding at La Fetra's who was taken sick and carried to Garfield Hospital, and the remains were carried to Barker's undertaking place and deceased went to the funeral, all of which—the funeral at the undertaker's and the hospital life—gave the deceased horrors. Witness on this point further testified, as follows: "And she came around to the house that evening and she said to me, 'It is the worst sight I ever saw in my life, a funeral at an undertaker's.' I said: "Well, they are common nowadays." I said: "They have no home and of course they can't be buried from the La Fetra's." She said: "I am going to make a request of you." I said: "What is it, Miss Julia?" She said: "Would you mind promising me that if I was taken sick you would take me to your house, and if I should die you would allow me to be buried from there?" "Well, I hesitated for a moment. It is quite a serious thing to obligate yourself to take care of a sick person, don't you know, and I didn't know whether I could do it just right, and I said: "Well, I would be perfectly willing to do it if I thought you would be satisfied." She said "You know I would be satisfied, and I want you to do it. It would be a great relief to my mind. I said: "Well, I certainly will do it." I said: "The only proviso I must make is that in the event we shall break up housekeeping, I said, then I won't have any place to take you." She said: "Would you mind putting that in black and white?"
145 I said I would not. "Well," she said, I am going to put in a business form." She was very businesslike, everything had to be businesslike, you know, so she made me write that, and the next day we went to Mr. Lichliter's and he witnessed it." Witness further testified it was arranged five or six years ago that the deceased was to be buried in witness' lot. Deceased had arranged to be buried with Mrs. Pierson, but learning that Mr. and Mrs. Pierson had the right to be buried in Arlington, she concluded they were going to give up their lot at Oak Hill, and there-upon asked witness to make her the foregoing arrangement. Thereupon the following paper, being identified by witness as being in her own handwriting and signed by Julia M. Adams, was offered and admitted in evidence; Marked Caveatees Exhibit R "This is to certify that whatever disposition Jennie G. Morgan makes of the $200.00 left in

my will for a head-rest whether it be a head stone or a monument jointly with her will be satisfactory to me, whichever she thinks best will be my wish.

(Signed) JULIA M. ADAMS.

April 11, 1905.

Witness further testified that deceased gave witness this paper after deceased had learned during a visit to Rock Creek Cemetery that there were no head-rest to be put in that section of the Cemetery, and that she must have a monument or nothing at all. It was arranged between them at that time that "Adams" was to be put on one side of the monument, and "Morgan" on the other.

146 Witness being asked what she heard deceased say about being lost, replied deceased never acknowledged she was lost, but said that by mistake she took the Connecticut Avenue Car instead of the 11th St. car, and rode out as far as La Fayette Square, got out and walked home. In this connection deceased stated that she was gratified to find that she had more strength than she expected; this was the occasion when deceased went to Warner's and witness who started to accompany her was detained. Missing her witness thought that she might get rattled or a little bit upset with the cars and hurried to the office, made inquiry, and found that Miss Adams had been there and left. The attention of the witness being called to the statement made by Mr. Rheem that the deceased called at his office one morning in September, 1904, at 8.30, the witness testified that deceased and herself breakfasted each morning together and that they did not get through until between half past eight and nine o'clock. Witness being asked what sort of food deceased had at her house, replied that she had liquid food, strictly under the doctor's direction; deceased did not like her food at times, and wanted solid, indigestible food, while the doctor ordered just the contrary. On being asked what care she took of deceased witness replied that she was both a trained nurse and private secretary: as to the latter explained she would do some writing for the deceased and make out checks for her; would sometimes write letters for her; on other occasions would send money to the church witness would address it. This was all the writing witness did for

147 the deceased. On her own account wrote to her nephew when deceased was sick; wrote every day in her last sickness, and once before when she was seriously ill. Kept nephew informed because she thought it was her duty to do so. Witness being asked if she ever had any conversation with the deceased after the will of February 11, 1905, concerning the will — was executed replied, as follows: "She used to say to me sometimes—well, I suppose three weeks before her death, she says to me: "Dearie, what are you going to do with the money which you will get after I am gone." I said, "Why, I don't know, Miss Julia; I hav-n't thought about those things. I am not thinking about you going, and I am not dwelling upon what I am going to do with the money." Well, she says, "I know, but I will go before you." She says: "What will you do with it?" "Well," I said, "I don't hardly know. I guess I will

build me a little home, buy me a little home;" and she says: "That is right, dearie; and I will come and see you." I says: "No, don't you do it." She says: "You wouldn't want me?" I says: "No, after you are dead I don't want you to come." "Well," she says, "I will peep down at you." I said: "All right, Miss Julia; you peep down at me." Witness, being asked as to what conversation she had with Miss Mann with reference to taking rooms at her house, after Miss Adams' death, replied that she met Miss Mann at the corner of 9th and F Streets and told her the details of Miss Adams' death and her sickness. On this occasion Miss Mann told witness she expected to make a change herself, whereupon witness said:

148 "You had better come and live with me. That this was that passed between them concerning rooms. The witness being asked to state what she had to say about the charge of undue influence in this case, replied: "I never would try to exert Miss Adams to do anything. I would not even suggest it. She was of that temperament that if you suggested it or courted a favor from her she would not do it."

On cross examination, witness was asked if she ever thought of having deceased come to live with her until a week before she came, replied that she hinted it before, but witness thought it was a mere passing notion; and had not thought of it at all until a week before she came; the first time she asked point blank to come was on Sunday about a week before she actually came, during which conversation her husband came in and the matter being brought to his attention remarked: "I guess it will be all right;" that about this time her husband remarked, that as they were having all the care of her and other people getting the money, they might as well take her," that this was two days after they had already agreed to take her. Being asked about the first occasion of the deceased engaging rooms at La Fetra's, witness replied deceased overheard her discussing her vacation with a friend; that decedent was very impulsive and just on that, without saying anything to witness at all, went right away and engaged a room at La Fetra's—this was 2, 3, or 4 weeks after deceased came to the home of the witness. Witness being asked about rooms that deceased occupied upstairs,

149 testified that she had two rooms, one a north room and the other a south room; that the south room had only one window in it; that the deceased wanted a sunny room, and it was for this reason that she engaged her room at La Fetra's the second time. That she did this without saying anything to witness about it till afterwards, and that she had seen the room of witness' home before she came there. This was the occasion when deceased told witness she hated to go, and would only stay upon the condition that witness would give up her own room to her downstairs. That she would not let Miss Adams be down stairs while witness was upstairs, but when she first came she had let Miss Adams be upstairs while witness and her husband roomed downstairs, but that she was a sick woman when she came down stairs. Being asked as to the condition of deceased before she came to the house of the witness to live, she replied, "I considered her sick,

but not very ill." Did not consider a person very ill if she was able to walk; that deceased came to her house every day for a month or more before she came there to live. Thereupon the *the* following letter dated July 14th, 1904, written by the witness to Charles H. Adams, was identified, offered and admitted in evidence, incorporated herein and marked exhibit D. Witness further testified that deceased insisted when they gave up their room to her that they keep all their personal effects in the room, which was done; that Mr. Morgan would brush his hair in the room, shine his shoes, etc.; that when his shoe box and other things were removed from the room it gave deceased impression that witness and her husband were going to move upstairs, whereupon the deceased was hurt and engaged a room at La Fetra's a third time without telling witness a thing about it, and witness had to laugh.

150 Witness being asked concerning the anxiety of the deceased over the Waggaman failure, testified that the deceased discussed the Waggaman failure morning, noon and night; that when deceased gave witness a note to take to the Warner Company concerning the reinvestment of notes that were about to mature; deceased said: "I may be in the same box." Witness told deceased that she did not think so. Witness further testified deceased never had a bank account to her knowledge. Witness being handed this note, which was dated October 10, 1904, identified the same as being in her handwriting and signed by the deceased, which was offered and admitted in evidence, as follows:

"Mr. Rheem please let me have the money on the enclosed notes. I want the money for something very near to my heart, and am not able to come down and attend to it myself.

"JULIA M. ADAMS."

Deceased told witness she did not want the money due on the above notes reinvested; that instead of telling the Warner Co., not to reinvest the notes, witness had gone with Caveators' Exhibit M. this letter and asked it to cash them; that deceased intimated to witness she was going to send some of the money to her nephews: further testified she never wrote any business letters for the deceased to her nephew; when deceased would get letters from her nephews she would read them herself and would sometimes *would* tell witness the contents, and read them to her. Witness testified that when she gave Rheem the above letter, he said he would see Miss Adams about it; that he first called at the house about the time witness took this note to

151 him—that is a short time after; that deceased saw him coming, was provoked that he had not cashed the note, and ran out of the room like a 16 year old girl, that she was not able to see him that day, was too sick. Her attention being called to her statement that when deceased saw him coming she ran away like a sixteen year old girl, and asked if she would reconcile this with her statement that she was too sick to see a visitor replied: "But, she ought not to have done it, it was the worst thing in the world for her." On being asked what instruc-

tions she got from the doctor on that occasion as to seeing people, witness replied "He told me not to let her see anybody when she did not want to." Witness told Mr. Rheem on that occasion that the doctor said she must not see people, that witness had known the nephew's address since July 1, 1904. Being asked as to her refusal to give Mr. Rheem the address of the nephew of the deceased, witness said that she was acting under instructions of the deceased, who ordered her not to give it to Mr. Rheem. Being asked what she meant by saying on her direct examination that the deceased was almost crazed when she would see Mrs. Malone said: "Well, she was roused and sympathetic; thought it was terrible; it was the saddest sight, and said: "I wish I could not see her." Witness further stated that the word "crazed" was stronger than the occasion demanded, that "sympathetic" was a better word. Witness further testified there was no one to look after the deceased except herself and husband, upon whom deceased depended entirely for attention up to six days before her death. Witness' attention being called to her statement in examination in chief that she had suggested that the lawyer
152 come to see deceased to make the will of October 1904, replied she had done so and that deceased had taken the suggestion, and witness added: "Simply suggesting a lawyer to come to the house and dictating to her about her business, you know are two vitally different things." Witness stated that Mr. Russell was about an hour fixing up the power of attorney of October 25th; that deceased told witness to take it down the next day, which witness did and felt insulted when Mr. Rheem declined to recognize it; that Mr. Rheem said it was ten years old, according to its date, and that he had been instructed not to advance money to her. That witness went back and told the deceased who perhaps remarked that she might have a Waggaman case sure enough; that deceased was indignant as well as the witness and made witness sit down and write a letter. Then witness told deceased that she could not possible use the power of attorney as they had reflected upon her integrity. Witness being asked further as to her business experience, said she kept books for her father—who was a fine business man, and was educating witness all through her early life; that her father's books were a day book, ledger and so forth, and that she did not know the difference between a day-book and a ledger, that the books were kept under his direction. Witness attention being called to the fact that the power of attorney was dated October 25th, and the letter November 28th, said she could not keep the dates in mind, that she took the power of attorney down whenever deceased told her. On being asked as to whether deceased had told
153 witness she had given any one else a power of attorney, witness replied that such language was used in the note dictated by testatrix, because witness had told the deceased Mr. Rheem was under the impression somebody else had a power of attorney. Witness further testified in response to question that deceased gave her the power of attorney in order that witness could see that the money was properly invested, could supervise it and see that the security was good; that deceased told her this about the time she

wrote the letter; that she wanted this done because it might be like the Waggaman failure; the Waggaman failure made her uneasy. At this point witness testified that the securities were in her possession for only about ten minutes, on October 7, 1904, when she got them from the trust company, and were in possession of testatrix from then on, and when this letter of Nov. 28 was written; that at that time deceased was anxious for fear the Warner people might be like Waggaman worrying night and day and that neither witness nor deceased took any steps to find out whether these notes were genuine or how they were secured between October 7, and November 28, though perfectly accessible to her. The power of attorney of October 25th, being at this point called to her attention, witness replied that she had taken no steps in the matter, that they would not recognize her as a power of attorney. Witness further testified that she had the key to decedent's trunk, which was not locked; that decedent kept the key to the box where the notes were. After Mr. Rheem failed to recognize the power of attorney, she said to deceased: "Wait until you are better and go down and
154 attend to it then." Witness said she took no steps to look into these notes because she expected the deceased to get up and attend to her business; that the power of attorney was only a temporary affair; when it was given deceased was suffering a great deal with stomach trouble; on November 28, when the letter was written, deceased had practically been confined to her bed for two months, suffered a great deal from nausea, walking around aggravated it. Being asked as to whether her husband went to Mr. Russell's to see what he could do about it, she said that they had not gone there together, her recollection being refreshed by the letter of November 28th, wherein the letter recited that witness called with her husband on Mr. Russell, after the power of attorney was not recognized, witness said "Perhaps that is right, come to think about it." Being asked if she and her husband did not transact business for the deceased when the latter was sick, witness said she would take Warner & Co., her checks and would get the money. Also took the power of attorney down to get all the notes collected and again $1,500.00 worth of notes to get cashed, always at the suggestion of the deceased. Witness further testified that Mr. Rheem, on the occasion of the interview with the deceased denied that he failed to acknowledge her as power of attorney, but did not claim he had cashed the $1500 notes as he had been requested. Said on this occasion deceased told Mr. Rheem that she had given the witness power of attorney and that she did not want her nephew to know her address; also told him that she wanted her money
155 put in bank, that she was old and sick and had more need for her money; that this conversation referred to the two notes that were about to mature; witness further testified that Miss Adams could not be easily influenced, and being asked how it was that she agreed to everything that Swartzell and Rheem wanted at this interview with regard to the reinvestment of her funds contrary to what she had desired and asked she testified: "They made a condition; if they had not agreed to advance her all the money

she needed, she never would have agreed to them renewing these notes." She was positive on that. Witness said she never referred to Miss Adams as 'Aunt Julia,' always called her 'Miss Julia.' Never stated at this interview "Aunt Julia is so changeable you never know"—Witness here identified a postal card written by her to Charles H. Adams, which was offered and admitted as evidence, as follows: Marked Exhibit E "June 20th, 11-½ p..m. Beyond all doubt or hope, Aunt Julia is not so well. In fact, the Doctor considers her very ill to night." Witness testified her idea was to say "Your Aunt Julia" is not so well * * * I always wrote to him about his Aunt Julia. Being asked if the deceased was not in a semi-unconscious — 3 or 4 days before her death, witness stated it was three or four hours. Witness at this point identified letter written by her to Charles H. Adams three days before she died, as follows; which, after being offered in evidence and admitted, was read to the jury: Being Caveatees' Exhibit K

"JUNE 21ST, 1905—10 p. m.

MY DEAR MR. ADAMS: The two doctors, one a consulting
156 physician gives us no hope. In fact, dear Aunt Julia is sinking. She may live through the night, and she may last a day or two, but they don't think so. She is conscious at times for a moment, but so weak her voice is nothing but a whisper."

The witness also identified as written by her a postal card two days later, at 10 a. m.; "Surprised that Aunt Julia was alive this morning. She is sinking into unconsciousness. Recognizing me for a moment about 6 a. m. to-day, but since then, don't know anyone."

Caveators' Exhibit L.

Being questioned with respect to this letter, witness testified that decedent did have a sinking spell and was unconscious when she was first taken, but that her mind cleared up. Witness further testified decedent had unconscious moments each day during her last sickness. Witness being asked the reason why the deceased gave up her box at the Washington Loan & Trust, testified it was because the notes matured at different times and testatrix could not tell when they were going to mature. Witness was here asked why the decedent did not make a list of these notes so that she could see when they fell due and leave the notes where they would be safe, witness replied decedent said she wanted the notes and wanted to keep right up with her business, that she wanted to peruse the notes; witness further testified she suggested to deceased, that when she got well she could take them back and put them in the box, and that deceased agreed to this. Witness being asked what was the "dull business season," discussed with the decedent by her husband and herself, replied that it was the summer and Christmas; that
157 this discussion would take place in the room of the testatrix, who would listen and took a great interest in it, and would mention it afterwards; that this occurred time and time again; Witness further testified that the deceased insisted upon their staying in the room. Witness testified the first $500. given her by the

deceased was given in June before the deceased made any proposition to come *came* to her house, that she said she gave it to witness to remember her by in case anything happened to her, and being asked if this was all, she said that she didn't remember all the words, that she was so surprised she could hardly remember what she did say, that the deceased said: "I will give you this and if I am sick and have to come to your house, you will take care of me." Witness here stated the deceased hinted at coming to her house for the two months previous. That when the $1,000 was given deceased got a Testament and made the witness put her hand on it and promise never to reveal it. The condition of her health at that time was pretty good with the exception of a stomach trouble; she also bound witness to secrecy when the $500. was given but did not have the Testament at that time. Witness further testified that the deceased was very kind hearted and sympathetic, and if she could relieve anybody she was interested in she would give them money; that deceased would not give you money if you asked her for it. Witness was here asked what she meant by saying that deceased gave money to other people, replied that she had been most generous to her nephew, Charles H. Adams. And that she knew no one but the
158 nephew and witness to whom testatrix ever gave anything Witness here testified that she wrote the instructions for the Lichliter will, because the deceased was in bed at the time; that she knew the contents of the last will of decedent; that it took the decedent a day and a half to prepare the memorandum for this will, because — would write a little while and get tired and take it up at her leisure. At this point a letter written by the witness to Mr. Charles H. Adams of Dec. 27, 1904 was offered and admitted in evidence which is filed herewith and marked Caveators' Exhibit H. Witness was here asked about the decedent being lost, and testified she never heard of her being lost, but she heard when she took the wrong car; that deceased wanted to go out with her that morning, but witness being detained deceased went on ahead. This was just like deceased, for when she wanted to go she went; that deceased went off without letting witness know, though she knew witness was going with her. Witness testified deceased was not lost a few days before that. On this occasion witness waited around the house only about five minutes and started out thinking that she would overtake the deceased; then went down to the office of Swartzell Rheem & Hensey, where deceased said she was going, but did not find her there; talked with Mr. Gross a while. In response to question witness testified that she did not see Mr. Rheem that morning; did not tell Rheem that deceased had got lost a few days previously, and that witness found her at the end of the 11th Street car line. After leaving the above office witness just casually walked down to her husband's office thinking deceased might be there; not finding her there, she went to La Fetra's, and not finding her there,
159 'phoned to Mr. Rheem, as witness then got a litle uneasy, and went again to her husband's store, witness also went to two other places looking for the deceased—at Mrs. Hughes' office over Huyler's Candy Store, going to the fifth floor of that

building. Witness did tell Miss Lehman at the office of Mrs. Hughes that she had been several places looking for the deceased, or that she was afraid she was lost, but probably told her, if she did not find her at the Treasury, where she was going, she would look for her further. In response to question witness testified she met Mrs. Doan in front of La Fetra's in the month of May, 1905, and talked with her about this incident, but never told her deceased wished to telegraph for her nephew, and never said to Mrs. Doan that she (the witness) did not see that that would do any good.

Thereupon the following testimony was given:

Q. "Now did Mrs. Doan say: 'I understand she wants to come back to the La Fetra's; and did you say: 'Oh, Miss Adams don't know what she wants. She got mad at me the other day because she heard me say to a friend who was calling that she was a great care, and prevented me from going out of the house very much. Miss Adams said, 'I will see that I don't keep you in the house any longer,' and went around and engaged a room at the La Fetra's?" A. "Oh, not a word of that." Q. "Not a word of that"? A. "Not one word of that." Q. "And did you further say to her: 'Now, you know, Mrs. Doan, she is a great care for me. She went down to Warner's the other day and got confused, got on the
160 wrong car, and went out to Mount Pleasant?' A. Mount Pleasant?" Q. "Yes." A. "No sir." Q. "You did not tell her that?" A. "No, indeed, Q. "Did you further say: 'I waited until after lunch for her to come back, and then I went for Decatur, and we had to go and look for her?' A. "Oh, no sir, no sir, no, sir!" Mr. Darlington. That is all."

This closed the case for the caveatees.

Thereupon the caveators called MM. A. MCKENNEY, trust officer of the American Security and Trust Company, who testified that it kept a complete record of all who rented boxes in its safe deposit vault, that the record showed testatrix never had a box there, but that she kept a will there at one time.

And the caveators further to maintain the issues on their part joined called, in rebuttal, Mrs. MARIA M. DOAN, who testified, as follows; concerning a conversation between herself and Mrs. Morgan at the postal letter box at the corner of 11th and G Streets, sometime in the Month of May, 1905: Q. "Did you on that occasion ask her, 'How is our little friend,' referring to Miss Adams; and did she reply: 'She is very poorly. She wishes us to telegraph for her nephew, but I do not see that would do any good' "? A. "Yes, sir." Q. "Witness being asked to state what else took place at that conversation replied: "I met Mrs. Morgan that morning, and I asked her how our little friend was, and she says: 'Well, she is poorly.'
161 "Well," I says, "her minds seems to be going with her body;" and she said: "Yes." She says: "She wants me to send a telegram to her nephew, but instead I am dropping a letter here in the box;" and I said to her: "Well, I understand she wants to come back here to the hotel;" and Mrs. Morgan says: "Yes, she got mad

with me because she overheard me say to a caller that she was a great care, and" she said, "she got mad and said that she would show me that she would not be a care to me any longer and she came down to the hotel." She said: "Did you hear about her getting lost?" "I said, 'Why, no; I had not heard anything about that." She said: "She started to go to B. H. Warner's, and she was gone so long that I got very uneasy about her. I started out to hunt her, and I could not find her, and I finally went and got Decatur," meaning her husband,—to go hunt her, and she says " 'Isn't it singular that she would take a car and go away out to Mt. Pleasant? Anyone that is as familiar with this city as she has been,' "she says," 'it shows that she is forgetting where she is.' That is just about the conversation we had. On cross examination, in response to question as to when that conversation occurred, witness replied it might possibly have been the last of May; witness further testified that this was the first and only time she ever heard about Miss Adams being lost—

Thereupon the caveators, further to maintain the issues on their part joined, called Dr. GUY STARK SAFFOLD, who testified that he was a doctor of medicine and a son of the Dr. Saffold, one of caveators' witnesses in chief. Witness testified that he knew the
162 deceased and saw her in June, 1905, two days before she died: She was then in a condition of apathy; was entirely unconscious of her condition or of anything that transpired around her. Witness called for about ten or fifteen minutes. In response to question testified that the average duration of paresis was from three to five years. On cross examination witness was asked and answered, as follows: Q. "Are you quite sure she did not ask about your father on that occasion?" A. "She did not ask me anything about my father; Mrs. Morgan said to her: 'This is the son of Dr. Saffold.' "And she said 'Would you like to see Dr. Saffold?' "and she said 'Yes'; "that is all she said."

Thereupon the caveators further to maintain the issues on their part joined called in rebuttal, Dr. JAMES P. SAFFOLD, who testified that the average duration of paresis as given by Chase and Moseley was from three to five years, and it was known to run as long as seven or eight. Witness said he had known one or two cases to run considerably over three or four years. On cross examination, witness testified that the majority of cases of paresis were in the prime of life; and that it was liable to affect the male sex rather than the female sex, and also liable to affect anyone from infancy to old age.

Thereupon the caveators further to maintain the issues on their part joined called, in rebuttal, Mrs. LAURA PATTERSON, who testified that the deceased was her god-mother. She saw deceased four times
163 after she went to the Morgan-', to wit, the last of August 1904 once in September, once in October, and once on December 26th. That on these occasions witness had conversation with the deceased concerning the latter's ability to read newspapers, in

which deceased told her she was unable to read the newspaper; that it nauseated her stomach, and that she could not read her prayers for the same reason.

Thereupon the caveators further to maintain the issues on their part joined called, in rebuttal, BURNETTA B. LEHMAN, who testified that she was a clerk in the office of Mrs. Hughes in the spring of 1905, the office being located in the Huyler Building at 12th and F Streets. Witness testified that in the spring of 1905 Mrs. Morgan called in the office and told witness that Miss Adams had left home, that she had been two or three places in search for her but could not find her. Mrs. Morgan further told witness she was very much worried that decedent was not in the habit of leaving home and that she was afraid that decedent would get lost; also that she would try again to find the decedent at the Treasury Department, and if she was not there she would have to give her up and go home.

Thereupon the caveators further to maintain the issues on their part joined called, in rebuttal, GEORGE W. F. SWARTZELL, who testified that on the occasion of the interview with Miss Adams at Mrs. Morgan's home on November 30, 1904, neither the witness nor Mr. Rheem said to Miss Adams on that occasion she had better let them renew the loan; that Miss Adams did not say to them that she wanted the other notes collected and put in bank. Witness
164 further testified he did not urge the deceased to let them renew the notes, or promise her to advance all the money she might need, or did he say to decedent that her notes were not made by janitors or office-boys, neither did witness tell her that they had always transacted business well for her, nor did they urge her to renew the notes. Witness also testified that decedent did not ask Mr. Rheem on that occasion why he had refused to recognize the power of attorney, nor did Mr. Rheem deny at that interview that he had refused to recognize it. On cross-examination the witness testified that the interview did not last more than ten or fifteen minutes, that he went there for the purpose of discussing her business affairs, and that he did not discuss these affairs so far as stated.

Thereupon the caveators further to maintain the issues on their part joined called, in rebuttal, CLARENCE B. RHEEM, who testified corroborating the foregoing statements just referred to and made by Mr. Swartzell, and in addition thereto testified, as follows:

Mr. DARLINGTON: Q. "It has been further testified that you and Mr. Swartzell urged Miss Adams to let you continue to renew on the ground that you had always transacted her business well, and that she finally said yes. Did that occur?" A. "No sir. Miss Adams requested that we should keep her funds invested, and asked if we were willing to do it, and we told her we were willing to do so." Q. "She asked if you would be willing to do so?" A. "Yes, if we would, yes, sir. She said it was her desire that they should
165 be kept invested." Q. "It is further claimed that at that interview you were asked why you should refuse to recognize

the power of attorney to Mrs. Morgan, and you denied that you had ever refused to recognize it. What was said about that power of attorney at that interview?" A. "Nothing at all." Q. "Not mentioned?" A. "No, sir." Q. "Did you meet Mrs. Morgan at your office building on the day that she was there looking after Miss Adams?" A. "I was coming in from lunch and I met Mrs. Morgan coming in on the door step. Q. "Please state if on that occasion she asked you if you knew where Miss Adams was, and told you she had gotten lost previously and they had found her at the Eleventh Street car line?" A. "She asked me if I had—she told me she had gone away from her and she was afraid she was lost. She said "she got away from me sometime ago"—several days or some time ago, "and she got lost and we found her way out at the end of the Eleventh street car line."

On cross-examination witness testified that the occasion referred to where he met Mrs. Morgan was the 4th day of May, 1905.

This closed the testimony on both sides, and the foregoing is all the evidence that was offered or given on either or both sides at the trial.

And counsel for the caveators prayed the following instructions; which *was* by the Court granted, and thereupon counsel for the caveatees took an exception to the granting of such prayer, which exception was allowed and entered upon the minutes:

166 3. "If the jury believe from the evidence that at the date of the paper writing offered as the last will and testament of the testatrix, and for a considerable time prior thereto, she had been and was an inmate of the house of Decatur Morgan and Jennie G. Morgan, that she was of advanced age and of frail and feeble bodily health, requiring much care, nursing and attention, for which she had been and still was dependent upon them, as, also, for aid in and attention to her business affairs, and that they, or either of them, were active in respect to or connected with the preparation and execution of the said paper writing, the burden of proof is upon them to show by a fair preponderance of the evidence that the execution of the said paper writing was not procured by undue influence, in default whereof the answer to the third issue should be Yes. (Granted.)

And thereupon counsel for the caveators prayed the following instructions which were by the Court granted:

1. "The jury are instructed that, while it is their duty to consider all the testimony in the case, including the testimony of witnesses as to their opinions concerning the mental capacity of the testator, the question whether the testator in fact was of sound and disposing mind, or in fact possessed testamentary capacity, is one for the jury alone; and it is their duty to give such weight and credit, and such weight and credit only, to the said opinion evidence of the witnesses as in their judgment properly attaches thereto under all the facts and circumstances of the case, as shown by the evidence, including the testimony of the said witnesses as to the grounds for their said opinions upon the said subject. (Granted.)

2. "In order to find that the testatrix was without sufficient mental capacity to make a valid will, it is not necessary to find that she was a lunatic, or totally reprived of reason and understanding, nor does proof of ability to understand familiar and unusual questions, and to make rational answers thereto, necessarily show such mental capacity. In order to make a valid will, the testator must possess a disposing mind and memory sufficient to enable him to make a disposition of his property with understanding and reason, and of his own volition, and if the jury find that, at the time of the execution of the paper writing as the last will and testament of Julia M. Adams, she did not possess such disposing mind and memory sufficient to enable her to make a disposition of her property with understanding and reason, and of her own volition, their answer to the second issue should be No. (Granted.)

167 And the following prayers granted on behalf of the caveatees and incorporated in the following charge of the Court to the jury, were severally objected to by counsel for the caveators, and objection being overruled to each and every one, an exception was noted upon the minutes:

1. "There is no evidence in this case that the execution of said will, propounded for probate, was procured by fraud or coercion; and the jury cannot set aside the same on that ground." (Granted.)

3. "That the presumption of law is in favor of the sanity of the testatrix and of her capacity to make a will; and the burden of proof is upon the caveator- to establish by a fair preponderance of the testimony a want of testamentary capacity in order to justify the jury in setting aside the will on that ground." (Granted.)

4. "That every person of twenty-one years of age is presumed to be of sound mind and competent to make a will, and this presumption extends through life, no matter to what age she may live. To make a valid will it is not necessary that the testatrix should be endowed with a high order of intellect, nor even an intellect measuring up to the ordinary standards of mankind. Nor it is necessary to the making of a valid will that the party should have perfect memory, and that her mind should be wholly unimpaired by age, sickness or other infirmities. If the party possesses memory and mind enough to know what property she owns and desires to dispose of, and the person or persons to whom she intends to give it, and the manner in which she wishes it applied by such person, and gene[illegible] fully understands her purposes and the business she is engaged in, in so disposing of her property, she is, in contemplation of law of sound and disposing mind. And neither age, nor sickness, nor extreme distress, nor debility of body, will affect her capacity to make a will, if sufficient intelligence is present in the testatrix. (Granted.)

5. "The jury are instructed as matter of law that they are not authorized to pass upon the question of the reasonableness of the provisions of the alleged will, of the said Julia M. Adams; nor would they be justified in finding against its validity because they thought the provisions of said will unreasonable, or not in accord with their ideas of what is right, or of what the disposition of the prop-

168 erty should have been. The jury can only consider the provisions of said will with all the other circumstances dis-

closed by the evidence, in determining the testamentary capacity of the said Julia M. Adams. (Granted.)

8. "Undue influence which will avoid a will means unlawful influence. All influence which may be used to induce a person to make a will in a given way is not unlawful. It is not unlawful for a person to suggest to the testatrix to make a will in a particular way, in favor of the person or persons suggesting, or any other, and to present arguments and reasons giving support to such suggestions. Such suggestion and argument addressed to the judgment and reason of the testatrix for the purpose of influencing her as to the propriety thereof are not unlawful, and therefore not undue, although they may have the effect of influencing her to make a will different from what she otherwise would have made, so long as the will is the direct act of her own deliberate judgment. Influence to be undue, and therefore unlawful, is that degree of importunity which overcomes and destroys the judgment and will of the testatrix, and induces her to make a will she did not desire to make, in order to rid herself of such importunities. (Granted.)

9. "The will should not be set aside on the ground of undue influence except upon satisfactory proof that such influence was exerted; and proof of opportunity to exert it, or of suspicion that it was exerted, is not sufficient. (Granted.)

11. "The jury are instructed that there is no evidence of fraud or coercion in this case, and their answer to Question 4 must be No. (Granted.)

14. "The jury are instructed as a matter of law that the testatrix had a right to make a will and dispose of her property as she pleased, even to gratify partiality or prejudice and even to the exclusion of those related to her." (Granted.)

Thereupon counsel for the caveatees prayed the following instructions which were by the Court refused, and thereupon counsel for the caveatees took an exception to each and every one, which exceptions were allowed and entered upon the minutes;

2. "Under the proofs in evidence in this case the jury would not be justified in finding, that at the time of the execution of the will propounded for probate, said Julia M. Adams was not of sound and disposing mind, capable of making a valid deed or contract, and their answer to the second issue should be Yes. (Refused.)

169 13. "The jury are instructed that there is no evidence of undue influence in this case, and their answer to the 3rd Question must be Yes. (Refused.)

15. "The jury are instructed that the burden of proof case upon Decatur and Jennie G. Morgan in caveators' prayer No. 3 upon the question of undue influence has been fully met by the evidence submitted by and on behalf of Decatur and Jennie G. Morgan, which established by a fair preponderance of evidence that no such influence was exerted, and the jury are instructed that their answer to the 3rd issue should be No. (Refused.)

170 *Charge of the Court.*

Now, gentlemen of the jury, in this case there were four issues when we started. As to one of them there was no dispute, this issue as to the execution of the will with all formalities, in due form of law, and that issue you will answer yes, without dispute. And the fourth issue was one as to whether this will had been procured by the fraud and coercion of the said Decatur or Jennie G. Morgan, or any other person or persons, and that by consent of counsel and by instruction of the court, you may answer no.

So that it leaves the two issues, the second and third, for you to consider on the testimony in this case. The second one is "was the said Julia M. Adams, at the time of signing said paper writing, of sound and disposing mind, and capable of executing a valid deed or contract?"

Now, on that subject, on behalf of the caveators, I have granted this instruction:

The jury are instructed that, while it is their duty to consider all the testimony in the case, including the testimony of witnesses as to their opinions concerning the mental capacity of the testator, the question whether the testator in fact was of sound and disposing mind, in fact possessed testamentary capacity, is one for the jury alone; and it is their duty to give such weight and credit, and such weight and credit only, to the said opinion evidence of the witnesses as in their judgment properly attaches thereto under all the facts and circumstances of the case, as shown by the evidence, including the testimony of the said witnesses as to the grounds for their said opinions upon the said subject."

In order to find that the testatrix was without sufficient mental capacity to make a valid will, it is not necessary to find that she was a lunatic, or totally deprived of reason and understanding,
171 nor does proof of ability to understand familiar and usual questions, and to make rational answers thereto, necessarily show such mental capacity. In order to make a valid will, the testator must possess a disposing mind and memory sufficient to enable him to make a disposition of his property with understanding and reason and of his own volition, and if the jury find that, at the time of the execution of the paper writing as the last will and testament of Julia M. Adams, she did not possess such disposing mind and memory sufficient to enable her to make a disposition of her property with understanding and reason and of her own volition, their answer to the second issue should be no."

Now, on behalf of the caveatees, on the same subject, I will read you these instructions that I have granted:

"That the presumption of law is in favor of the sanity of the testatrix and of her capacity to make a will; and the burden of proof is upon the caveator- to establish by a fair preponderance of the testimony a want of testamentary capacity in order to justify the jury in setting aside the will on that ground."

"That every person of twenty-one years of age is presumed to be

of sound mind and competent to make a will, and this presumption extends through life, no matter to what age she may live. To make a valid will it is not necessary that the testatrix should be endowed with a high order of intellect, nor even an intellect measuring up to the ordinary standards of mankind. Nor is it necessary to the making of a valid will that the party should have perfect memory and mind enough to know what property she owns and desires to dispose of, and the person or persons to whom she intends to give it, and the manner in which she wishes it applied by such person, and generally fully understands her purposes and the business she is engaged in, in so disposing of her property, she is in contemplation of law, of sound and disposing mind, and neither age nor sickness, nor extreme distress, nor debility of body, will affect her capacity to make a will, if sufficient intelligence is present to the testatrix."

"The jury are instructed as matter of law that they are not authorized to pass upon the question of the reasonableness of the provisions of the alleged will of the said Julia M. Adams; nor would they be justified in finding against its validity because they thought the provisions of said will unreasonable, or not in accord with their ideas of what is right, or of what the disposition of the property should have been. The jury can only consider the pro-
172 visions of said will with all the other circumstances disclosed by the evidence, in determining the testamentary capacity of the said Julia M. Adams."

I think these are all that bear upon the question of the testamentary capacity, with the exception of this one that I have just granted this morning:

"The jury are instructed as a matter of law that the testatrix had the right to make a will and dispose of her property as she pleased, even to gratify partiality or prejudice, and even to the exclusion of those related to her, if she was of sound mind and not governed by undue influence."

Now, on the third issue, "was the execution of the said paper writing by the said Julia M. Adams procured by the undue influence of said Decatur Morgan or Jennie C. Morgan, or any other person or persons," and that I have granted this instruction on behalf of the caveator-:

"If the jury believe from the evidence that at the date of the paper writing offered as the last will and testament of the testatrix, and for a considerable time prior thereto, she had been and was an inmate of the house of Decatur Morgan and Jennie G. Morgan, that she was of advanced age and of frail and feeble bodily health, requiring much care, nursing and attention, for which she had been and still was depending upon them, as, also, for aid in and attention to her business affairs, and that they, or either of them were active in respect to or connected with the preparation and execution of the said paper writing, the burden of proof is upon them to show by a fair preponderance of the evidence that the execution of the said paper writing was not procured by undue influence, in default whereof the answer to the third issue should be yes."

Now, as to what is "undue influence" I have granted certain instructions here on behalf of the caveatees:

"If the jury find from the evidence that the testatrix was of sound mind, the undue influence which will avoid her will means unlawful influence. All influence which may be used to induce a person of sound mind to make a will in a given way is not unlawful.

173 It is not unlawful for a person to suggest to the testatrix, if of sound mind, to make a will in a particular way in favor of the person or persons suggesting, or any other, and to present arguments and reasons giving support to such suggestions. Such suggestions and argument addressed to the judgment and reason of the testarix, if found to be of sound mind, for the purpose of influencing her as to the propriety thereof, are not unlawful, and therefore not undue, although they may have the effect of influencing her to make a will different from what she otherwise would have made, so long as the will is the direct act of her own deliberate judgment. Influence to be undue, and therefore unlawful, is that degree of importunity which overcomes and destroys the judgment and will of the testatrix and induces her to make a will she did not desire to make, in order to rid herself of such importunities."

Now, I think that is the only prayer that I have granted on that subject on behalf of the caveatees. To state the subject of undue influence a little differently, I will state the law, as follows: In order to avoid a will on the ground of undue influence it must appear that the testatrix's free agency was destroyed and that her will was overborne by excessive importunity, coercion or fraud, so that the testamentary paper signed and witnessed does not in fact express her wishes as to the disposition of her estate, but expresses the wishes and purposes of the person or persons exercising such influence. The exercise of an honest influence by persuasion or importunity, or reasonable importunity, will not invalidate a will; it must be such influence as compels the testator to do that which is against his will, either from fear or desire for peace, or some other feeling which he is unable, under the circumstances of the case, to resist.

From this definition of "undue influence" of course it follows that if the person has a weakened mind, a mind that is

174 weakened and below the normal standard of a mind, less influence will be required to control the mind of such a person, and it would take a less degree of undue influence to invalidate the will. So that you will have to measure the mind and the influence together in a case of this kind where you have these two issues. If a strong, healthy person of robust body and strong mind was charged or was said to have made a will by the undue influence of somebody else, then, of course, a jury would require a greater evidence as to the force of that influence. If a mind is weakened, and still not weakened beyond the point of a sound and disposing mind, so that a valid will could be made, and no influence is exerted, of course, the will would stand; and it will stand anyway unless the influence has been exerted to such a degree as to destroy the operation of that mind and make the will become the will of the person exerting that undue influence, rather than the will of the party purporting to

make the testamentary disposition; and such a will will stand notwithstanding the mind may be weakened, provided it is the will of the party who is making it. If the influence is not exerted to that degree, even though some influence has been exerted, not exerted to that degree to destroy that will, that power,—that disposing power of the mind, the will would still stand.

So that you have both those situations to examine from this testimony, to ascertain whether or not the will is one that should be set aside by reason of want of mental capacity, or whether it
175 should be set aside on the ground of undue influence, or whether, notwithstanding the charge of undue influence, or the charge of the testamentary incapacity, this was not the will of this lady and made by her voluntary free will, notwithstanding the acts that have been proven in evidence here of Mr. and Mrs. Morgan, as to care and looking after her business affairs, and all that, during her last days. You have to consider, of course, all the testimony in the case and all circumstances. This old lady came on here in the early sixties and entered the department earned all the money she had, and lived away from her relatives, and she reached the age where she had left the government office and still did not return to her native place where her relatives were living; said, on one side, that she did not return because of her health or the climate, and on the other side that she preferred to live where she had lived so many years of her life, in this climate and among strangers so far as blood was concerned.

You will have to look at all those circumstances in determining whether or not this be the will of this lady. If it was her will, absolutely her will, then, of course, it should stand. If it was the will of Mr. and Mrs. Morgan, why then it should not stand, because they had no right to tell her how she should dispose of her property, if they did so, by any influence that they brought upon her. But if she was capable of making a will, then the acts of kindness that have been shown her, the devotion that has been shown between Mrs. Morgan and this old lady ought not to influence you in
176 the right that she had to make the disposition of her entire property to please herself. She had dominion over it so long as she had mental capacity to make a will; and even if she had given it all to strangers it would not make any difference, provided they exerted no influence to compel her to make the will in that — was against her own notions of it.

I don't know that I can make it any plainer.

Mr. JACKSON: I would like to inquire if you read the caveatee's prayer No. 12? I don't remember that your Honor read it. I don't think your Honor read it. I would like to be certain about that."

The COURT: No. I believe that is one prayer that I omitted to read.

"The jury are instructed that to establish the charge of undue influence, two points must be sustained. First, the fact of the undue influence exercised, and second, that this undue influence was effectual in producing the alleged result overcoming the mind of the testatrix in the particular act of making the will."

While I didn't read it in my general statements I have covered the ground. There are two issues. When you make up your minds how you shall answer them write the word "Yes" or "No" opposite these two issues, the second and third. The first is to be answered "Yes" and the fourth "No."

The credibility of the witnesses, of course, is wholly for you gentlemen to determine, what credence you shall give that witness and what credence to the other.

The will itself is a piece of testimony in the case, and the estate—the value of the estate is another piece of testimony that has been offered. The inventories which were offered show the estate
177 to have been something over $7,000—$7,394.50 on the one inventory I see, and on the other $77.52. There are two inventories filed, one being an inventory of money and debts due to the deceased and the other an inventory of the notes.

Mr. DARLINGTON: That is exclusive of the $2,250 drawn out July before her death.

The COURT: Oh, yes, and this is the amount of her estate that was represented on the above inventories.

178 CAVEATOR'S EXHIBIT.

EX. SAFFOLD, No. 1.

Know all men by these Presents that I, Julia M. Adams, now of the City of Washington, District of Columbia, have made, constituted and appointed J. P. Saffold of said District and City aforesaid, my true and lawful Attorney for me and in my stead, to look after my interests and benefits, at such times and places that I may be at in the future. Should I become from any cause unable to look after, care for, and attend to my own business, and especially to look after my personal comfort and well being during such time or times, and to have the power hereby granted to demand and receive from those persons who may have charge of my monies and personal property, such sum or sums of money as may be necessary in his opinion to make me comfortable and well cared for. To the extent of such care and attention, and to the full authority of meeting such expenses as aforesaid. I grant this Power of Attorney to my friend J. P. Saffold, and hereby ratify and confirm all that he may lawfully do in the premises. I further empower and request that my said friend J. P. Saffold see that my remains besent to Danbury, Connecticut for interment in care of my sister Susan C. Barnum or her husband Nathaniel Barnum or Charles H. Adams of 4th Grove St., South Norwalk, Conn. I also request that in case of my sickness, that the above mentioned relatives be notified of the fact; not sent for, but let free to act as circumstances might direct.

179 In witness whereof I hereunto set my hand and seal this the fifteenth day of December, A. D. 1898.

Signed and sealed in presence of

(Signed) JULIA M. ADAMS. [SEAL.]

(Signed) FANNIE E. MALONE."

CAVEATOR' EXHIBIT K.

#1008 H ST., N. W., *June* 21, 1905—10 p. m.

MY DEAR MR. ADAMS: Your highly appreciative letter received this afternoon, and I assure you it was a comfort to me—to know that you felt we were doing all in our power for Aunt Julia for I assure you there is nothing that can be done for her, but which will be done. but Oh! my heart aches for I have no good news for you. The two Doctors, one a consulting Physician gives us no hopes. In fact dear Aunt Julia is sinking she may live through to night—and she may last a day or so but they don't think so. She is conscious at times for a *moment,* but, so weak her voice is nothing but a whisper, her bowels are still running off and nothing seems to do any good she is only able to take a little broth & wine with a teaspoon. We have one of the very best *trained* nurses who is a member of our church—her physician is the one that has been attending her for several years and this afternoon to feel that every thing possible that could be done—*must* be, we have had him call in a consulting physician and he said Dr. Atkinson had done every thing that possible could be. It is hard for us to sit at her bedside and realize that we cannot do anything more for her for I assure you if she was my own blood kin I could not love her more dearly and I realize that with her passing away some thing goes out of my life that can never be replaced. We shall sadly miss her tender devotion to both Husband and self.

In the event of her death will notify you promptly, In regards to her burial as you know she will be buried here. Four years ago she bought a site in a lot bought by myself and it is her wish to be buried here. I notified her friends here of her sudden illness those that she thought a good deal of and every one came to see her today. The Assistant Pastor of our Church came also & prayed for recovery—God grant it may be heard but have very little, if any hope. In regards to hearing from you — she always enjoyed getting your letters as you say we do not like to feel that we are forgotten, she would always say "Charly never forgets to write me." I am writing this with the hope you will get it early in the morning. I realize how you are pressed for time & your long hours—but will be glad to receive a letter & would like to know if you will be able to come if the said event of her death takes place within a day or so. My only wish is comply with any of your wishes. Will write you again in the morning. I am writing this sitting by her bed side.

Sincerely,

(Signed) JENNIE G. MORGAN.

181 CAVEATOR'S EXHIBIT H.

#1008 H ST. N. W., WASHINGTON, D. C., *Dec.* 27, '04.

Mr. C. H. Adams, Norwalk, Conn.

DEAR SIR: I feel it my painful duty to let you know that your Aunt Julia is quite sick again. I do not with to alarm you but thought it best to let you know promptly that she has had another attack of heart failure. Last October when I wrote you, she was confined to her bed for two months. The last few weeks she has been sitting up almost half of the time and seemed to be steadily improving and was looking forward to Christmas with a great deal of pleasure, for I had a beautiful Christmas tree for her in her room and all her presents including yours is on the tree now, but last Thursday she did not seem so well and her feet and hands & face were considerably swollen. I sent for the Dr. at once and he gave her some medicine which reduced the swelling in the face and hands entirely but her feet are yet somewhat swollen. The Dr. said this morning, she was stronger but on account of her age he was not as sanguine as he would like to be, last night I stayed up until after one P. M., so as to give her her heart medicine and to night Mr. Morgan will sit up with her. We are doing all we can for her and I feel very
182 much encouraged about her. Yet she was not so well she has had a splendid appetite until the last few days—but she is taking a medicine which is equivalent to food. Her Pastor called to see her Christmas day which was a great pleasure to her and also a number of her church friends. She was delighted with your gift, and had me put it right on her Christmas tree. If she should not improve I will let you know so you can take comfort from the fact "That no news is good news," which will certainly hold good in this case.

Very sincerely,

MRS. DECATUR MORGAN.

CAVEATOR'S EXHIBIT I.

#1008 H ST., N. W., *July* 14", '04.

Mr. Chas. H. Adams, South Norwalk.

DEAR SIR: Ever since your Aunt Julia came to live with us, I have been intending to write you, as requested in your letter to her. Before she came she was sick for over a month not confined to her bed, for that she would do, she will surely die on her feet, but so feeble, she could scarcely get around, she used to come to my house about 9 A. M. and stay until 8 P. M., when either myself or Husband would take her home. I think she was feeling so badly she did not like to be alone and finally she suggested coming to our house
183 to live, and I was very glad indeed to have her and, have tried to the best of my ability to make her comfortable, and look after her personal wants. She has been suffering a great deal for

over a month with sick stomach and extreme weakness, but was opposed to having a Doctor finally after much persuasions she consented to have her Physician and Mr. Morgan telephoned for him yesterday. The Doctor says there was no reason for any alarm her pulse was good & strong & she was only suffereing with general debility due to her advanced age. I don't know whether you remembered it or not but your Aunt Julia was 82 years old last Friday the 8th of July quite a number of friends called to see her that day and, she rec'd several beautiful bouquets of flowers. I wanted the Doctor's opinion of her before I write to you and this must be my apology for not writing before. The Doctor says also, it was a wise move on her part to make a change from that small room at La Fetra's, here she has two large rooms, Parlor & bed room, second floor, situated North and South and has the entire range of the house, but she stays with me all the time & don't seem to want to be alone, all of her friends have called to see her & she takes great delight in showing her rooms & telling them how pleasantly she is situated which is a great comfort to me. I have known your Aunt Julia for a number of years & we have always been warm friends. I think her sister's death made her feel worse—she so often says. They are all gone but me,
but she is feeling better to day. I shall keep you posted from
184 time to time in regards to her condition but hope she will be soon back to her normal condition.

Respectfully,
(Signed) MRS. DECATUR MORGAN.

Your Aunt sends her love to you & wife and will write when able.

CAVEATOR'S EXHIBIT E.

JUNE 20—9½ P. M.

Beyond all doubt or hope Aunt Julia is not so well in fact the Dr. considers her very ill to night. I wrote you this A. M. but about 10 P. M. to night I noticed a change in her. Sent at once for Dr. & he says she is as bad off as she was Sunday, she is a little flighty, bowels cannot be checked, will write you in morning.

(Signed) MRS. MORGAN.

JUNE 20TH.

Aunt Julia is doing a little better than just holding her own. We think the cool wave yesterday was a great help to her. She is perfectly conscious but weak had a fairly good night but takes very little food, sick stomach, and running off of the bowels is the trouble principally but Dr. says her heart is weak alone—will keep you posted every day.

Respectfully,
(Signed) MRS. M.

185 CAVEATORS' EXHIBIT L.

FRIDAY—10″ a. m.

The Doctors have just left—surprised that Aunt Julia was alive this morning. She is sinking into unconsciousness, recognized me for a moment about 6 A. M. today but since then don't know any one. It is wonderful the way she has lasted. I think sometimes she recognized condition but was anxious to get well but she will have a glorious *awaking*—for she is one of God's chosen, will drop you postal to night.

(Signed) MRS. M.

CAVEATORS' EXHIBIT M.

MR. RHEEM—

Please let me have the money on the enclosed notes. I want the *want the* money for something very near to my heart—and I am not able to come down and attend to it myself—

(Signed) JULIA M. ADAMS.

Oct. 10″ 1904.

186 CAVEATORS' EXHIBITS.

CAVEATORS' EXHIBIT A.

Power of Attorney.

Know all men by these presents, That I, Julia M. Adams, of Wash. D. C., have made, constituted, and appointed, and by these presents do make, constitute, and appoint Jennie G. Morgan of Wash. D. C. my true and lawful Attorney, for me, and in my name, place and stead, to demand, ask, sue for, collect and receive all sums of money, bonds or other valuables which are due, owing or payable to me from Nineteen certain Notes, in sums as follows: $3,250 drawn by William J. Palmer & dated Nov. 22 1899, secured on Lot 46, Sq. 36 Col. Heights, $1000. drawn by W. A. Faulkner & dated Dec. 30-1898, secured by Deed of Trust on Lots 12 & 21 Sq. 63 & 81, Petworth, Note of $1000. drawn by Wm. A. Faulkner & dated Dec. 30-1898, secured on lots 22 & 30 Sq. 40, Petworth Notes of Francis A. Blundon, dated April 23- 1896 & secured on Lots 118, 119 & 121, sq. 3, West Eckington, Note of $700. dated Oct. 17-1902, secured on lot 60 sq. 24, C. H., Notes of W. W. Eldredge, dated March 28- 1898, lot 11, Bk. 13 Takoma Park, Note of $400. Jno. A. Blundon, Aug. 10-1892, pt. lots 132 & 133 sq. 1004, & note 250 W. A. Faulkner, Dec. 30- 1898, lot 28 sq. 84 Petworth. And for the purposes aforesaid, I do hereby grant unto my said attorney full power and authority to do and perform all and every act whatsoever requisite and necessary to be done in and about the premises, as fully to all intents and purposes as I might or could do if person-

ally present, with full power of substitution and revocation, hereby ratifying and confirming all that my said Attorney shall
187 lawfully *due* or cause to be done by virtue hereof, hereby annulling and revoking all former Powers of Attorney or authorizations whatever in the premises.

In witness whereof, I have hereunto set my hand and seal, the 25th day of October, in the year one thousand eight hundred and ninety four.

(Signed) JULIA M. ADAMS. [SEAL.]

Witness—
PERCY H. RUSSELL.

Personally appeared before me, the subscriber, a Notary Public for said City & District, the aforenamed Julia M. Adams to me well known and acknowledged the foregoing Letter of Attorney to be her free and voluntary act and deed for the purposes therein set forth.

Given under my hand on this 25th day of October 1904, at Wash., D. C.

(Signed) PERCY H. RUSSELL,
Notary Public, D. C.

CAVEATORS' EXHIBIT R.

This is to certify that whatever disposition Jennie G. Morgan makes of the two hundred dollars left in my will, for a head rest whether it be a head stone or a monument—jointly with her will be satisfactory to me, whichever she thinks best will be my wish.

(Signed) JULIA M. ADAMS.

April 11- 1905.

188 EXHIBIT G.

WASHINGTON, D. C., *May 8th*, 1902.

This is to certify that it is my wish that Mr. and Mrs. Decatur Morgan should take charge of me in case of sickness and if I have to be removed, I am to be taken to their house, and they are to have entire charge of my effects in my room and have them removed to where I am.

In case of my death they are to take charge of my body at once make all the arrangements for my burial & funeral— Pack my trunk and take possession of my effects until otherwise disposed of by terms of my will.

(Signed) JULIA M. ADAMS.

Witness:
JACOB J. LICHLITER,
Washington, D. C.

The foregoing is all the evidence adduced or offered in the case and all the proceedings occurring at the trial.

All the foregoing proceedings were had, and all the exceptions hereinbefore mentioned were prayed, allowed, taken and noted, before the jury retired to consider of their verdict.

And thereupon the caveatees prayed the Court, and now pray the Court, to sign and seal this their bill of exceptions, to have the same force and effect as if each of the said exceptions were separately and severally set forth in a separate bill of exceptions; and
189 the same is accordingly done, and the Court signs and seals this bill of exceptions, to have the force and effect aforesaid, now for then, this 22d of October, 1906.

JOB BARNARD, *Justice.* [SEAL.]

(Endorsement: Bill of Exceptions. Filed Oct. 22, 1906. James Tanner, Register of Wills, D. C., Clerk of Probate Court.)

190 *In re* Administration of JULIA M. ADAMS, Dec'd. Administration, # 13028.

The clerk will please include the following in the transcript of record for the Court of Appeals.

1. Will of Feb'y 11" 1905
2. Affidavit in relation thereto
3. Petition of Decatur Morgan for probate &c.
3. Will proved by one witness
7. Petition and Caveat of Carrie M. Adams & Chas. H. Adams
8. Two answers to petition & caveat
9. Motion to frame issues
10. Order framing issues &c.
*Inventory of money and Debts.
11. Inventory of personal estate by Collectors
12. Order fixing Ap'l 16" 1906 as date of trial
13. Petition & caveat of Frank W. Adams filed
14. Order continuing date of trial to May 7" 1906
15. Order for trial of issues
16. Order making Caveators plaintiffs & Caveatees defendants
17. Verdict breaking will
18. Notice of Appeal & citation thereon
19. Order fixing appeal bond
20. Citation on appeal returned service accepted S. Herbert Giesey
21. Order of June 14 approving appeal bond
22. Note of filing bill of exceptions and notice of settling same for July 16" 1906

191 23. Order of July 25, extending time for filing transcript of record.

* Aug. 31.

24. Order [Oct. 5"†] extending time of filing transcript of record
25. Order Oct. 10 " " " " " " "
26. Bill of Exceptions as settled Oct. 22" 1906

E. HILTON JACKSON,
Att'y for Appellants.

(Endorsement: Order for transcript of record. E. Hilton Jackson, Att'y for Appellants. Filed Oct. 26, 1906. James Tanner, Register of Wills, D. C., Clerk of Probate Court.)

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*Changes made in order for transcript by E. Hilton Jackson, Nov. 7, '06.

[†Word and figure enclosed in brackets erased in copy.]

192 Form No. 94.

Supreme Court of the District of Columbia, Holding a Probate Court.

DISTRICT OF COLUMBIA, *To wit:*

I, James Tanner, Register of Wills for the District of Columbia, Clerk of the Probate Court, do hereby certify the foregoing pages, numbered from 1 to 191, inclusive, to be true copies of the originals of certain papers on file in the office of the Register of Wills, Clerk of the Probate Court, in case No. 13,028 estate of Julia M. Adams deceased, wherein Decatur Morgan and Jennie G. Morgan are appellants, and Charles H. Adams, Frank W. Adams and Carrie M. Adams are appellees, the same constituting a full, true, and correct transcript of record of proceedings had in said cause according to the written order of counsel filed therein and made a part hereof.

I further certify, That the bond for appeal, in the penalty of One Hundred dollars, was duly filed by said appellants and approved by said Court on the 14th day of June, A. D. 1906.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said Probate Court, this 8th day of November, A. D. 1906.

[Seal Supreme Court of the District of Columbia.]

JAMES TANNER,
Register of Wills for the District of Columbia,
Clerk of the Probate Court.

192½ [Endorsed:] District of Columbia Supreme Court. No. 1740. Decatur Morgan, *et al.*, Appellants, *vs.* Charles H. Adams, *et al.* Court of Appeals, District of Columbia. Filed Nov. 9, 1906. Henry W. Hodges, Clerk.

193 *Addition to Record per Stipulation of Counsel.*

Court of Appeals, District of Columbia, January Term, 1907.

No. 1740.

DECATUR MORGAN and JENNIE G. MORGAN, Appellants,
vs.
CHARLES H. ADAMS, FRANK W. ADAMS, and CARRIE M. ADAMS.

Filed Nov. 27, 1906.

194 In the Court of Appeals of the District of Columbia.

No. 1740.

DECATUR MORGAN and JENNIE G. MORGAN, Appellants,
v.
CHARLES H. ADAMS, FRANK W. ADAMS, and CARRIE M. ADAMS, Appellees.

Stipulation.

It is stipulated and agreed by and between counsel for the respective parties hereto that the *nunc pro tunc* judgment entered herein by the Supreme Court of the District of Columbia on the 22nd day of November, A. D., 1906, may be made a part of the transcript of record filed in this court, to the same extent and with the same effect as though said judgment had been entered upon the verdict under the rules of this Court.

J. J. DARLINGTON,
S. HERBERT GIESY,
Counsel for Caveators.
E. HILTON JACKSON,
Counsel for Caveatees.

195 In the Supreme Court of the District of Columbia, Holding the Probate Court.

In re Estate of JULIA M. ADAMS, Deceased. Administration, No. 13028.

Judgment.

Upon consideration of the motion of the caveatees and the verdict herein, it is this twenty-second day of November, 1906, adjudged and decreed that the probate and record of the paper writing bearing date the 11th day of February A. D. 1905, be, and it is hereby, refused and the prayers of the petition of Decatur Morgan and Jennie G. Morgan, caveatees herein, be, and are

hereby, denied and the petition dismissed, and that the costs of this proceeding be jointly and severally paid by the said Decatur Morgan and Jennie G. Morgan and execution issued therefor.

It is further adjudged and decreed that the foregoing judgment on the verdict be entered *nunc pro tunc*.

ASHLEY M. GOULD, *Justice.*

196 Supreme Court of the District of Columbia, Holding a Probate Court.

DISTRICT OF COLUMBIA, *To wit:*

I, Wm. C. Taylor, Deputy Register of Wills for the District of Columbia, Clerk of the Probate Court, do hereby certify, That the foregoing is a true copy of the original order of Court of November 22, 1906, refusing probate of will, dismissing petition of caveatees, &c., and that judgment on verdict be entered *nunc pro tunc* filed and recorded in the office of the Register of Wills for the District of Columbia, Clerk of the Probate Court, in the matter of the estate of Julia M. Adams, deceased Case No. 13,028, Adm. Doc. 34.

I further certify, That I have compared said copy with the original record in said office, and find it to be a full, true and correct transcript thereof.

Witness my hand and the seal of the said Probate Court, this 22nd day of November, A. D. 1906.

[Seal Supreme Court of the District of Columbia.]

W. C. TAYLOR,
Deputy Register of Wills for the District of Columbia,
Clerk of the Probate Court.

[Endorsed:] No. 1740. Decatur Morgan and Jennie G. Morgan, appellants, *vs.* Charles H. Adams, Frank W. Adams, and Carrie M. Adams. Addition to Record per stipulation of counsel. Court of Appeals, District of Columbia. Filed Nov. 27, 1906. Henry W. Hodges, clerk.

TUESDAY, *February 5th, A. D.* 1907.

No. 1740.

DECATUR MORGAN and JENNIE G. MORGAN, Appellants,
vs.
CHARLES H. ADAMS, FRANK W. ADAMS, and CARRIE M. ADAMS.

The argument in the above entitled cause was commenced by Mr. E. Hilton Jackson, attorney for the appellants, and was continued by Mr. S. H. Giesy, attorney for the appellees.

WEDNESDAY, *February 6th, A. D.* 1907.

No. 1740.

DECATUR MORGAN and JENNIE G. MORGAN, Appellants,
vs.
CHARLES H. ADAMS, FRANK W. ADAMS, and CARRIE M. ADAMS.

The argument in the above entitled cause was continued by Messrs. S. H. Giesy and J. J. Darlington, attorneys for the appellees, and was concluded by Mr. E. Hilton Jackson, attorney for the appellants.

Court of Appeals, District of Columbia, January Term, 1907.

No. 1740.

No. 5, Special Calendar.

DECATUR MORGAN ET AL., Appellants,
vs.
CHARLES H. ADAMS ET AL., Appellees.

It is this sixth day of February 1907 stipulated by counsel for appellants and appellees that the error in the transcript of the record on page 33 shown to the Court during argument by exhibition of the original account or list of drafts and checks sworn to by Clarence B. Rheem at the trial (R. 34) may be corrected by the Clerk by pasting in the printed record the following transcript of the items omitted in copying by the Probate Court.

Mar.	14	" " " " " " "	..... 50.
"	30	" " " " " " "	..... 50.
Apr.	14	" " " " " " "	..... 50.
"	21	" " " " " " "	..... 50.
"	29	" " " " " " "	..... 50.
May	3	" " " " " " "	..... 50.
"	15	" " " " " " "	..... 50.
"	30	" " " " " " "	..... 50.
June	14	" " " " " " "	..... 75.

E. HILTON JACKSON,
For Appellants.
S. HERBERT GIESY,
Attorney for Appellees.

(Indorsed:) No. 1740. Court of Appeals District of Columbia. Decatur Morgan *et al.* appellants *vs.* Charles H. Adams *et al.* appellees. Addition to Record per Stipulation of Counsel. Court of Appeals, District of Columbia. Filed Feb. 6, 1907. Henry W. Hodges, Clerk.

No. 1740.

DECATUR MORGAN and JENNIE G. MORGAN, Appellants,

vs.

CHARLES H. *Morgan,* FRANK W. ADAMS, and CARRIE M. ADAMS.

Opinion.

Mr. Chief Justice SHEPARD delivered the opinion of the Court:

This is an appeal from an order denying the probate of the will of Julia M. Adams, who died in the District of Columbia on June 24, 1905.

The will was executed in proper form on February 11, 1905. After directing the payment of debts, if any, and expressing the desire to be buried in a lot in Rock Creek Cemetery, which she owned jointly with her friends, Decatur and Jennie G. Morgan, the testatrix made the following bequests:

1. To Jennie G. Morgan $200, for the purpose of erecting a stone to mark testatrix's grave.

2. To Jennie G. Morgan, watch, all jewelry, clothes, personal effects, and books.

3. To Jennie G. Morgan $3,000 for her kindness and care, in event of her death before testatrix to go to her husband, Decatur Morgan.

4. To Decatur Morgan $1,000, and in case of his death before testatrix to Jennie G. Morgan.

5. To Epiphany Church, of Washington, $250 for its endowment fund.

6. To Carrie M. Adams and Frank W. Adams each $10.

7. All the rest and residue of her estate to her nephew Charles H. Adams.

Decatur Morgan was appointed executor.

This will was offered for probate by Decatur Morgan on June 29, 1905. On August 7, 1905, Carrie M. and Charles H. Adams filed a caveat, charging that the testatrix was not of sound mind and, therefore, incapable of executing a valid will on February 11, 1905; that execution of the will was procured by undue influence exercised by the said Morgans; and that its execution was procured by fraud and coercion practiced by the said Morgans.

The Morgans having answered denying the aforesaid charges, the following issues were framed in the special term holding sessions for probate business, and transmitted to another of the special terms for trial by jury:

1st. Was the paper writing propounded as the last will and testament of Julia M. Adams, bearing date the 11th day of February, 1905, executed by her in due form of law?

2nd. Was the said Julia M. Adams at the time of executing the said paper writing of sound and disposing mind and capable of executing a valid deed or contract?

3d. Was the execution of the said paper writing by said Julia M. Adams procured by the undue influence of said Decatur Morgan or Jennie G. Morgan or any other person or persons?

4th. Was the execution of the said paper writing by said Julia M. Adams procured by the fraud and coercion of the said Decatur Morgan or Jennie G. Morgan or any other person or persons?

By answering "yes" to the first and third issue and "no" to the second and fourth, the jury found that the will was executed in due form; that the testatrix was not at the time of its execution of sound and disposing mind and capable of executing a valid will or contract; that execution had been procured by the undue influence of the Morgans; and that execution was not procured by the fraud and coercion of the said Morgans.

From the final order entered in accordance with said verdict, the Morgans have prosecuted this appeal.

Four specifications of error have been assigned by the appellants. The first three relate to the issue of undue influence. The fourth relates to that of testamentary capacity, and is that the court erred "in refusing to instruct the jury to return a verdict of 'yes' in respect to the issue as to whether testatrix was of sound and disposing mind as set forth in caveatees' second prayer."

Inasmuch as testamentary capacity is the primary question in such cases as this, and the issue relating thereto was, as usual, the first in order of submission, we shall first consider the error assigned thereon.

The following facts appear substantially without question: Testatrix was about 82 years of age on February 11, 1905, and physically weak. She came from Connecticut to Washington about forty years before her death and obtained a position in the Treasury Department as a clerk. Because of her advanced age she was compelled to give up her position some five or six years before her death. Her entire estate, amounting to about $7,500, at the time of her decease, was the result of savings from her salary. Aside from clothing, a watch, some inexpensive ornaments, and books, the estate consisted of notes secured by liens upon real estate. Her practice had been to invest her savings in loans. These investments had been made for her for many years through B. H. Warner & Co., who attended to collections of principal and interest, and to renewals and reinvestments. She had a box in the safety vaults of the Washington Loan and Trust Company wherein she kept her notes. She was very economical and after her retirement from the public service lived upon the interest of her investments. Until the last year of her life she had never encroached upon her principal but once. Some time in 1894 she drew $1,000 which she gave to her nephew Charles H. Adams, who lived in Connecticut, to enable him to build a house. For this she took his note, bearing interest, secured by a mortgage upon the property, with the understanding that he need pay neither principal nor interest until called upon to do so. No interest had ever been called for by her. Her relations with this nephew, who is

one of the caveators, were affectionate, and they maintained correspondence with each other. For some years prior to her retirement from work, and until the last year of her life, she lodged and boarded in the La Fetra hotel, paying therefor $35 per month. She had been a woman of bright mind and strong will.

Some years prior to her decease the Morgans, who had recently intermarried, came to the La Fetra house to live, and made the acquaintance of the testatrix. Mrs. Morgan and testatrix became intimate friends and evinced much affection for each other. These intimate relations continued after the Morgans established homes in other parts of the city, and in May, 1902, testatrix, who had attended the funeral of an old friend in an undertaker's establishment, and was much affected thereby, wrote and signed instructions directing that in case of her serious illness the Morgans were to care for her, and in the event of her death to see to her proper burial. She frequently spent the day in the Morgans' house, and about one year before her death went to live with them. Mrs. Morgan testified that testatrix said to her: "I am old and sick, and need some person to take care of me." Testatrix had made several wills during some years before her death, changing bequests by reason of deaths of beneficiaries, etc. The same attorneys who had prepared these wrote another for her on October 11, 1904. The memoranda for this will were taken to the attorney by Mr. Morgan. When prepared it was executed and attested in proper form. This will directed the payment to Mrs. Morgan of $200 for the erection of a monument, gave $1,000 each to her and Mr. Morgan, and bequeathed the residue of her estate to the caveatees, two of whom were her nephews and one her niece. Her books were also given to her nephew, Charles H. Adams. This will was apparently destroyed after the execution of the one in controversy, which was written by the attorney of Mr. Morgan, who received the memoranda therefor from Morgan. In the spring of 1904 testatrix commenced drawing very unusual sums of money from her investment agents. The drafts in February, March, and April were not unusual, but increased in amount and frequency in May, June, and July. In June she ordered a $500 note cashed and drew the money. She received at one time $1,505.60 for another note ordered cashed. The total amount of drafts between February 3 and December 29, 1904, was $2,875.72. From January to June 14, 1905, she drew $730.

The caveators introduced a considerable number of witnesses to show incapacity on the part of the testatrix at the time of the execution of the will. These had known her for from twenty to thirty years, and had opportunities to know her mental condition during the time.

It would serve no useful purpose to review the testimony at length. Some of it, by itself, was of no very great weight, as it tended to show that testatrix had become enfeebled in body and mind during her last ten years, but fell short of showing total incapacity. She was described as becoming forgetful, repeating the same thing frequently during a short conversation, and talking incoherently. One of these, however, who had known testatrix intimately for many

years, had visited her and talked with her while at the Morgans. She testified that she observed quite a decline in her mental and physical strength during these later years. Her memory was failing very fast and in a marked degree. She had a weak, feeble and almost childish expression and manner, and needed some one to care for her as if she were a child. She was very weak and feeble in February, 1905; seemed to be mentally incapacitated in every way, and perfectly dependent. She had formerly always been particular in dress and dressing her hair, but ceased to dress her hair and dressed like an invalid unable to properly dress herself. Failure was rapid during the last year of her life. A physician who had known testatrix intimately for years, and occasionally treated her, said that her mind had been strong, but some four or five years before her death he observed indications of senile degeneracy and progressive paresis. Other testimony tended to show that some months prior to making the will she had undertaken to show her nephew the room in the Treasury where she had worked many years, but was unable to find it. There was other testimony tending to show acts of forgetfulness and change of purpose. The president of the Washington Loan and Trust Company, where her notes were kept, testified to having had business for her during thirty years. He testified that he saw her in October, 1904, and was forcibly impressed by the change in her mental condition. His opinion was that she needed some one to look after her affairs. Mr. Rheem, formerly of the B. H. Warner Company, said that he had attended to her investments, collections of interest, and re-investments for twenty years or more. That she had been a very close, saving woman, keeping her money invested, and never encroaching upon her principal save in the advance made to her nephew some ten or twelve years before her death. That after she had cashed the $500 note in June and the one for $1,500 in July, 1904, he became suspicious of her condition; and when she sent a message to him in September to cash another note for $1,500, he declined to do so.

In the fall or winter of 1904, after another demand to cash a note, he went to see her and asked her if she really wanted the money. She said "no." Mrs. Morgan was present at the interview, and remarked: "Well, that is the way with Aunt Julia; she never knows what she wants to do from one day to another." When asked on cross-examination why his firm paid testatrix's drafts thereafter (these were generally in sums of $50 from time to time), he said: "I consulted counsel and was advised it was my duty to withhold the principal from testatrix in case of the payment of notes; at the same time I was told to allow a liberal support even if it were taken from the principal, unless I chose to embarrass Miss Adams by lunacy proceedings." He said his firm assumed the responsibility of a loss of the money rather than distress Miss Adams by refusing to honor drafts for her support. Mr. Swartzell, another member of the firm, said that he went with Rheem to see testatrix November 30, 1904, and said that she did not appear in a fit condition, mentally or physically, to manage her affairs.

Testimony tended further to show that it had been the practice of

the company when interest was collected to have her get the proper note from her safe deposit and bring it for endorsement of the credit. During the last year of her life she had on three different occasions returned with the wrong note, and that on one occasion she had made three trips before presenting the right note.

Other testimony tended to show that Mrs. Morgan had stated on one occasion that she was hunting testatrix, who had left home to visit her broker's office and had gotten lost. The office was but a few blocks from her home. Also that Mrs. Morgan had said that testatrix had gotten lost twice on similar trips; that once she had taken an Eleventh street car and gone out to the end of the track; another time she had taken a Mount Pleasant car, and had been found at that place, which was several miles away.

The caveatees introduced a less number of witnesses than the caveators had, whose testimony tended to show that they knew testatrix well, and that, though physically weak during the last year of her life, she was mentally sound and capable of executing a valid will.

The prayer of the caveatees to direct the jury to answer "yes" to this issue was offered at the conclusion of all of the evidence. Having refused it, the court gave all of the prayers requested by them relating to this issue. These directed the jury, substantially, that the presumption of law is in favor of the sanity and capacity of the testatrix to make a will, and that the burden of proof is upon the caveators to establish a want of testamentary capacity by a fair preponderance of testimony. That every person of 21 years of age is presumed of sound mind and competent to make a will, and this presumption extends through life no matter to what age she may live; that to make a valid will it is not necessary that the testatrix should be endowed with a high order of intellect, nor even an intellect measuring up to the ordinary standards of humanity; nor is it necessary that the testatrix should have perfect memory, and a mind wholly unimpaired by age, sickness, or other infirmities; if she possesses memory and mind enough to know what property she owns and desires to dispose of, and the person to whom she intends to give it, and the manner in which she wishes it applied by such person, and generally fully understands her purposes and the business she is engaged in, in so disposing of her property, she is in contemplation of law of sound and disposing mind, and neither age, nor sickness, nor extreme distress will affect the capacity to make a will if sufficient intelligence is present. That the jury are not authorized to pass upon the reasonableness of the provisions of the will; nor would they be justified in finding against it because they thought its provisions unreasonable or not in accord with their ideas of what is right or what the disposition should have been.

After careful examination of the testimony we are of the opinion that the court did not err in refusing the appellants' prayer to direct a verdict.

It is the province of the jury to determine the credibility of the witnesses and the weight to be given to their testimony, under proper instructions for their guidance, which, as we have seen, were given

as requested by the appellants. It is only when, conceding the credibility of the witnesses and giving effect to every legitimate inference that may be deduced from their testimony, the party having the burden of proof upon an issue has plainly not made out a case sufficient in law to entitle him to a verdict, that the court is justified in withdrawing the issue from the consideration of the jury. Adams *v.* W. L. G. R. R. Co., 9 App. D. C., 26, 31, and cases there cited:

See, also, a case wherein the issue was of the testamentary capacity. Barbour *v.* Moore, 10 App. D. C., 30, 48:

Another way of stating the rule in such cases is this: If fair-minded men might honestly draw different conclusions from the evidence the fact must be determined by the jury under proper instructions as to the law applicable thereto. McDermott *v.* Severe, 202 U. S., 600, 604, and cases cited; see, also, Mosheuvel *v.* D. C., 191 U. S., 247, 252.

We have not recited the testimony offered on behalf of the caveatees to rebut the case made by the caveators, and have rested our conclusion on the sufficiency of the latter, because it is not within the province of an appellate court to pass upon the weight to be given the evidence as a whole any more than upon the credibility of the several witnesses. If the evidence be regarded as sufficient, under the requirements of the law in a particular case, to warrant its submission to the jury, and their verdict has been approved and carried into judgment by the trial court, the consideration of the appellate court is confined to errors of law in respect of the admission and exclusion of evidence and the charge. Ætna Life Insurance Co. *v.* Ward, 140 U. S., 76, 91; Barbour *v.* Moore, 10 App. D. C., 30, 50:

The conclusion at which we have arrived renders it unnecessary to consider the errors assigned in respect of the issue of undue influence. The verdict on the issue of testamentary capacity being sufficient to support the judgment it would not avail appellants if error could be shown on the other. To obtain reversal, error would have to be shown in respect of both. McDermott *v.* Severe, 25 App. D. C., 276, 282: S. C. 202 U. S., 600, 603:

There was no necessary connection between the determination of the two issues, and it is not perceived how error in respect of one could have prejudiced the appellants in the trial of the other. In view of the verdict upon the first issue a finding in their favor upon the second would be of no avail. Glenn *v.* Sumner, 132 U. S., 152, 157: West *v.* Camden, 135 U. S., 507, 521.

Finding no error for which the verdict on the first issue could be set aside and a new trial thereof ordered, the judgment must be affirmed with costs.

Affirmed.

TUESDAY, *March 5th, A. D.* 1907.

No. 1740, January Term, 1907.

DECATUR MORGAN and JENNIE G. MORGAN, Appellants,
vs.
CHARLES H. ADAMS, FRANK W. ADAMS, and CARRIE M. ADAMS.

Appeal from the Supreme Court of the District of Columbia.

This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia, and was argued by counsel. On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said Supreme Court in this cause be, and the same is hereby, affirmed with costs.

Per Mr. CHIEF JUSTICE SHEPARD.
March 5, 1907.

TUESDAY, *March 12th, A. D.* 1907.

No. 1740.

DECATUR MORGAN and JENNIE G. MORGAN, Appellants,
vs.
CHARLES H. ADAMS, FRANK W. ADAMS, and CARRIE M. ADAMS.

A writ of error to remove the above entitled cause to the Supreme Court of the United States was prayed by Mr. E. Hilton Jackson, attorney for the appellants.

No. 1740.

DECATUR MORGAN and JENNIE G. MORGAN
vs.
CHARLES H. ADAMS, FRANK W. ADAMS, and CARRIE M. ADAMS.

Opinion on Application for Writ of Error.

(Mr. Chief Justice SHEPARD delivered the opinion of the Court:)

The appellants have applied for a writ of error to review this judgment in the Supreme Court of the United States.

The value of the estate claimed under the will offered for probate is about $7000. The bequests to the two appellants combined amount to $4200, and the remainder of the estate, after three small legacies, is bequeathed to Charles H. Adams. However, the latter, whose interest under the will is apparently greater than that which he will receive as one of the three next of kin in case of intestacy, is one of the contestants of the will. Decatur Morgan, one of the appellants, is the executor named in the will and charged with its execution.

We entertain some doubt whether the appellants are entitled to

the writ of error under the decisions on which they rely. Overby *v.* Gordon, 177 U. S., 214, 218; Shields *v.* Thomas, 17 How., 3; N. O. Pac. Ry. *v.* Parker, 143 U. S., 42, 51. Following our rule in cases of doubt, the writ of error is allowed; and the bond therefor without supersedeas is fixed at $300.

THURSDAY, *March* 14, *A. D.* 1907.

No. 1740.

DECATUR MORGAN and JENNIE G. MORGAN, Appellants,
vs.
CHARLES H. ADAMS, FRANK W. ADAMS, and CARRIE M. ADAMS.

It is ordered by the Court that a writ of error to remove the above entitled cause to the Supreme Court of the United States issue, and the bond for costs is fixed at the sum of three hundred dollars.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable the Justices of the Court of Appeals of the District of Columbia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court of Appeals before you, or some of you, between Decatur Morgan and Jennie G. Morgan, Appellants and Charles H. Adams, Frank W. Adams and Carrie M. Adams Appellees a manifest error hath happened, to the great damage of the said appellants as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 14th day of March, in the year of our Lord one thousand nine hundred and seven.

[Seal Court of Appeals, District of Columbia.]

HENRY W. HODGES,
Clerk of the Court of Appeals of the District of Columbia.

Allowed by
SETH SHEPARD,
Chief Justice.

(Bond on Writ of Error.)

Know all Men by these Presents, That we Decatur Morgan and Jennie G. Morgan, as principal, and The Title Guaranty and Surety Company of Scranton Pennsylvania, as surety, are held and firmly bound unto Charles H. Adams, Frank W. Adams and Carrie M. Adams in the full and just sum of Three Hundred Dollars to be paid to the said Charles H. Adams, Frank W. Adams, and Carrie M. Adams certain attorney, executors, administrators, or assigns; to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 20th day of March, in the year of our Lord one thousand nine hundred and seven.

Whereas, lately at a Court of Appeals of the District of Columbia, in a suit depending in said Court, between Decatur Morgan and Jennie G. Morgan, appellants and Charles H. Adams, Frank W. Adams and Carrie M. Adams a judgment was rendered against the said Decatur Morgan and Jennie G. Morgan and the said Decatur Morgan and Jennie G. Morgan having obtained a writ of error and filed a copy thereof in the Clerk's Office of the said Court to reverse the judgment in the aforesaid suit, and a citation directed to the said Charles H. Adams, Frank W. Adams and Carrie M. Adams citing and admonishing them to be and appear at a Supreme Court of the United States, to be holden at Washington, within thirty days from the date thereof:

Now, the condition of the above obligation is such, That if the said Decatur Morgan and Jennie G. Morgan shall prosecute said writ of error to effect, and answer all costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

DECATUR MORGAN. [SEAL.]
JENNIE G. MORGAN. [SEAL.]
THE TITLE, GUARANTY & SURETY COMPANY, [SEAL.]
By GEO. E. JOHNSON, [SEAL.]
Attorney in Fact.

[Seal of the Title Guaranty & Surety Company.]

Sealed and delivered in the presence of—
E. HILTON JACKSON.

Approved by—
SETH SHEPARD,
Chief Justice Court of Appeals of the District of Columbia.

[Endorsed:] No. 1740. Decatur Morgan and Jennie G. Morgan, appellants, *vs.* Charles H. Adams, Frank W. Adams, and Carrie M. Adams. Bond on Writ of Error to Sup. Ct. U. S. Court of Appeals, District of Columbia. Filed Mar. 20, 1907. Henry W. Hodges, clerk.

UNITED STATES OF AMERICA, *ss:*

To Charles H. Adams, Frank W. Adams, and Carrie M. Adams, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error, filed in the Clerk's Office of the Court of Appeals of the District of Columbia, wherein Decatur Morgan and Jennie G. Morgan are plaintiffs in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Seth Shepard, Chief Justice of the Court of Appeals of the District of Columbia, this 20th day of March, in the year of our Lord one thousand nine hundred and seven.

SETH SHEPARD,
Chief Justice of the Court of Appeals of the District of Columbia.

Service accepted this 20th day of March, 1907.
J. J. DARLINGTON,
Att'y for Defendants in Error.

[Endorsed:] Court of Appeals, District of Columbia. Filed Mar. 20, 1907. Henry W. Hodges, clerk.

Court of Appeals of the District of Columbia.

I, Henry W. Hodges, Clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages numbered from 1 to 113, inclusive, contain a true copy of the transcript of record and proceedings of the said Court of Appeals in the case of Decatur Morgan and Jennie G. Morgan, Appellants, *vs.* Charles H. Adams, Frank W. Adams and Carrie M. Adams, No. 1740, January Term, 1907, as the same remains upon the files and records of said Court of Appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court of Appeals, at the City of Washington, this 25th day of March A. D. 1907.

[Seal Court of Appeals, District of Columbia.]

HENRY W. HODGES,
Clerk of the Court of Appeals of the District of Columbia.

Endorsed on cover: File No. 20,645. District of Columbia, Court of Appeals. Term No. 267. Decatur Morgan and Jennie G. Morgan, plaintiffs in error, *vs.* Charles H. Adams, Frank W. Adams, and Carrie M. Adams. Filed March 28th, 1907. File No. 20,645.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1908.

No. 50.

DECATUR MORGAN AND JENNIE G. MORGAN,
Plaintiffs in Error,

vs.

CHARLES H. ADAMS, FRANK W. ADAMS, AND CARRIE M. ADAMS.

In Error to the Court of Appeals of the District of Columbia.

BRIEF FOR PLAINTIFFS IN ERROR.

This is an appeal from the judgment of the Probate Court entered upon the verdict of a jury upon issues framed under a caveat filed against the probate of a paper writing alleged to be the last will and testament of Julia M. Adams, the verdict of the jury being that the said paper writing was not such and the judgment thereon refusing the probate and record of said paper writing. The testatrix died on June 24, 1905, and at

her decease a paper writing, dated February 11, 1905, alleged to be her last will and testament, was produced in court, and on June 29, 1905, a petition was filed by Decatur Morgan, the person named as sole executor therein, asking for the probate of the said paper writing as the last will and testament of the deceased. To this petition a caveat was filed by certain of the next of kin of the said Julia M. Adams, and issues framed upon said caveat submitting to a jury for trial:

1. Whether said paper, dated February 11, 1905, was executed in due form of law.

2. Whether at the time of the execution thereof the deceased was of a sound and disposing mind and capable of executing a valid deed or contract.

3. Whether said paper writing was procured by the undue influence of Decatur Morgan or Jennie G. Morgan, or any other person or persons.

4. Whether said paper writing was procured by the fraud and coercion of the said Decatur Morgan or Jennie G. Morgan, or any other person or persons.

Upon the trial of the issues, the court named the caveators plaintiffs, and the caveatees defendants, and thereupon counsel for the caveators announced to the court that they abandoned the first issue as to the due execution of said will. The court ordered that the caveatees formally prove the due execution of the will which was done by the oaths of Howard C. Riley and Julia Hicks (now Mrs. William H. Woodcock), they being the only subscribing and attesting witnesses. The death of the deceased was admitted as of June 24, 1905 (R. 20). A trial was had and a verdict was rendered against the validity of the alleged will on the ground that the testatrix was not of sound and disposing mind and that the alleged will was procured by the

undue influence of Decatur Morgan or Jennie G. Morgan or other person or persons (R. 16). By an instruction of the court, the jury found that said paper writing was not procured by the fraud or coercion of Decatur Morgan or Jennie G. Morgan, or any other person or persons. Judgment was entered on the foregoing verdict from which an appeal was prosecuted to the Court of Appeals of the District of Columbia, which affirmed the judgment.

Testatrix, aged 82, was unmarried and came to Washington in the early sixties, where she lived continuously up to the time of her decease. For many years deceased clerked in the Treasury Department, was naturally a remarkable woman, with high mental characteristics, a good conversationalist and well read (R. 26). A predominant trait was her persistent stubbornness and strong will power (R. 25). The only relatives living at her death were a nephew and niece, Charles H. and Carrie M. Adams, of Norwalk, Connecticut, and a nephew, Frank W. Adams, of Dayton, Ohio, all children of a brother of the deceased. None of these relatives lived in Washington. She was visited in Washington in December, 1902, by her nephew, Frank, who was sent to Washington by his employers, and while in the city on that business called on testatrix (R. 22). The other nephew, Charles H., visited his aunt in Washington once on December 17, 1903. The niece, Carrie M., never visited or corresponded with the testatrix in Washington. The only time specifically mentioned in the record testatrix visited her relatives during more than forty years' residence in Washington was in 1898 or 1899, when she was in Norwalk, Connecticut, and while there called on her niece at the latter's place of business (R. 22).

These relatives were not apparently possessed of much of this world's goods, the brothers were both machinists, and the sister "a sort of a nurse." Their circumstances were known to the testatrix, through whom Charles H. built a home for himself, and a year after he built she sent him $1,000.00 to take up a part of the mortgage on said home, which was never called for by the testatrix. This nephew was written to by Mrs. Morgan frequently for the testatrix, and he was apprised of the serious condition of his aunt some time prior to her decease, but did not start to Washington until after he got news of his aunt's death (R. 23).

Her estate consisted only of personalty in the form of secured real estate notes, aggregating with accumulations thereon $7,327.52, and jewelry, books, wearing apparel, etc., appraised at $144.50. By her will, dated February 11, 1905, testatrix gave to the Endowment Fund of Epiphany Church $250.00; to Jennie G. Morgan, $3,000.00; to Decatur Morgan, $1,000.00; her niece, Carrie M. Adams, $10.00; to her nephew, Frank W. Adams, $10.00. She also gave to Jennie G. Morgan her gold watch, jewelry, clothing, personal effects and books, and directed that the executor pay the said Jennie G. Morgan $200.00 for placing a stone at her last resting place. The residue of her property was bequeathed to Charles H. Adams, and Decatur Morgan was named as executor of her said will.

Testatrix went to the Morgan home in July, 1904. That the relations existing between her and the Morgans were friendly, if not intimate, prior to this time, appears from the letter of her nephew, Charles H. Adams, of June 22, 1905 (R. 25), as well as from other testimony offered by the caveators.

Assignment of Error.

The court erred:

1. In refusing to instruct the jury to return a verdict of "No" in respect of the issue of undue influence as embodied in caveatees' 13th prayer (R. 88).

2. In granting the 3d prayer of the caveators casting the burden of proof upon the caveatees in respect of undue influence (R. 86).

3. In refusing the 15th prayer of the caveatees which instructed the jury that the burden as to undue influence cast upon the caveatees by the 3d prayer granted on behalf of the caveators had been fully met by the evidence which established by a fair preponderance that no such influence was exerted (R. 88).

4. In refusing to instruct the jury to return a verdict of "Yes" in respect to the issue as to whether testatrix was of sound and disposing mind as set forth in caveatees' 2d prayer.

Brief and Authorities.

I.

The court erred in refusing to instruct the jury to return a verdict of "No" in respect of the issue of undue influence as embodied in caveatees' 13th prayer.

For convenience all such evidence will be set forth here, from which it will be seen, even if uncontroverted, nothing more than a suspicion or possibility of undue influence can be inferred, and, under the authority of Beyer *vs.* Le Fevre, 186 U. S., 114, such possibility or suspicion is not sufficient to thwart the intention of the testatrix.

See also Randall *vs.* Ry. Co., 109 U. S., 478.

The caveators' testimony in support of undue influence is wholly circumstantial and is directed substantially to proof of (a) efforts on the part of the testatrix to leave the Morgans, (b) statements alleged to have been made by testatrix to others indicating a temporary lack of confidence in the Morgans and circumstances connected with the gifts *inter vivos* of testatrix to the former, (c) efforts on the part of the testatrix to clothe Mrs. Morgan with power to manage her business affairs, (d) testimony to show that relations between the Morgans and the testatrix were not friendly, and (e) testimony tending to show that some who called on testatrix were either not permitted to see her or were interrupted in conversations during the call.

Admitting the full force of all the inferences that may be drawn from this testimony, it is submitted that

it was not sufficient to go to the jury under the authorities.

a. After testatrix went to the Morgans, on three distinct occasions she went in person to La Fetra's and expressed herself as being discontented and unhappy at the Morgans, made arrangements to take back her old room at that hotel and later recalled these arrangements through a messenger or through a postal card in the handwriting of Mrs. Morgan (R. 28). Is it to be assumed, in the absence of explanatory testimony, that this conduct reflects anything more than a vacillation on the part of testatrix, characteristic of persons of her age, or at most a changeableness testified to by Mrs. Doan, who said sometimes she would like a person and sometimes she would not (R. 25, 26). One of the caveators' witnesses explains at least one of these periods of discontent at the Morgans to the effect that testatrix had a room upstairs she did not like, that testatrix insisted upon being brought down stairs, and this was done by Mrs. Morgan (R. 38); another, that testatrix felt more at home at La Fetra's, and was hungry for a cup of coffee (R. 26).

b. The evidence showing a temporary lack of confidence in the Morgans consists wholly of hearsay alleged to have come from the testatrix. It is to be observed with reference to all testimony of this character that the law looks upon it with suspicion, not only because it refers to *words* alleged to have been spoken by the testatrix but to language that she has no opportunity to contradict, her lips being sealed.

Clarence B. Rheem, a member of the firm of Swartzell, Rheem & Hensey, testified that Miss Adams had cashed $753.12 and $1,500, respectively, in notes in June and July, 1904; that she made an attempt in the

following September to cash another $1,500 in notes, but Mr. Rheem declined to do so, and the next morning testatrix thanked him for his refusal, and told him not to cash any more notes, and further that the Morgans were robbing her, and that she could not get away from them (R. 31, 32). The bookkeeper of Mr. Rheem at first failed to testify as to this conversation, but after Mr. Rheem's testimony and after spending a night off the stand, during which time he apparently refreshed his memory, he corroborated Mr. Rheem as to request of testatrix not to let her have any more money, but failed to corroborate him as to the most significant part of the interview, at which he was present, wherein testatrix said the Morgans were robbing her. The foregoing is considered significant by the appellees because in June $500 was given to Mrs. Morgan, and $1,000 in July, aside from other small gifts, one of these amounting to $50, for a Christmas present to Mrs. Morgan, out of which she was to buy something for the testatrix. In this connection Mary E. Mann, another of the caveators' witnesses, testified that in October, 1904, testatrix expressed regret to her that she had gone to the Morgans, and in response to question as to why she did not leave, said: "They have got my money and I cannot get away." Another, Malvina G. Carmick, testified that testatrix told her when she got to the Morgans she found a large arrearage in rent on the Morgans' store and house, and she had to pay it off for fear of having to move again or being homeless. Mrs. Albenia Van Wickle said she saw the testatrix once while at the Morgans, when testatrix spoke of money matters and was excited and worried over that part of the conversation; Mrs. Scott tells of interview in which testatrix said she was dissatisfied

at the Morgans, but in the very same interview testatrix told her the Morgans were very good to her (R. 37).

It may be conceded during the last months of her life she was lavish in her gifts to the Morgans, but these circumstances are insufficient irrespective of the explanation of Mrs. Morgan to create even a suspicion of undue influence. It should be recalled that at this period of her life her relations with all her relatives were broken off save with one nephew, with whom she corresponded and who under the will gets more than one-third of her estate, in fact more than he would receive in the event the will is not finally sustained. Can it be said that the gifts of $500 and $1,000 to the person in whose home she was living and with whom she sustained the most friendly relations, constitutes an evidence of undue influence? Nor is the weight of this observation diminished if subsequently testatrix in a moment of caprice or discontent expressed regret that she had gone to the Morgans. These statements are the purest hearsay, and the lips of the testatrix are closed either to contradict or to explain and, besides, they are utterly at variance with the affection and regard in which she held the Morgans, as disclosed by caveators' testimony.

c. On October 25, 1904, testatrix gave Mrs. Morgan a General Power of Attorney to withdraw her securities from Swartzell, Rheem & Hensey, and to manage her business generally. It nowhere appears in the caveators' testimony that this power of attorney was ever solicited by the Morgans, or that it was not the voluntary act of the testatrix. All attempts to clothe Mrs. Morgan with either partial or exclusive control over the business affairs of the testatrix failed wholly

because of the refusal of her business agents to honor the orders drawn on them. The will in controversy was not executed until February 11, 1905, whereas the last attempt on the part of the testatrix to clothe Mrs. Morgan with any such authority is contained in her letter of November 28, 1904, in which this power of attorney is intelligently discussed. It is admitted that Mrs. Morgan wrote this letter for the testatrix, who signed it, but no inference that it did not reflect the mind and wish of the testatrix can be inferred from this circumstance (R. 31). It is also significant that, although Mrs. Morgan, by virtue of a power of attorney dated June 29, 1904, had full access to the lock box of the testatrix, she never made use of this power of attorney.

d. It is submitted that the testimony of the caveators, so far from showing unkindness on the part of the proponents to the testatrix, clearly establishes that these relations were friendly throughout, subject only to apparent interruptions, based wholly upon hearsay testimony. Not a single act of unkindness by the Morgans to the testatrix was ever observed by anyone.

Mr. Rheem refers to a conversation in which he says testatrix told him the Morgans were robbing her, yet he is not corroborated by his bookkeeper, who is present at this interview (R. 34).

Mr. Black refers to her wishes, expressed to him on three different occasions, that she was not satisfied at the Morgans, and wished to return, but one of these occasions is disposed of by the testimony of Mrs. Mann, who says testatrix told her she had a room at the Morgans she did not like, which room was changed when testatrix complained; another, by Mrs. Doan, who said testatrix told her she felt more at home at La Fetra's.

Mrs. Scott says testatrix told her several times she was dissatisfied at the Morgans, yet this same witness speaks of the uniform regard she expressed for the Morgans, and the statement of the testatrix that the Morgans were very good to her (R. 37).

Testatrix told Mrs. Doan that sometimes the Morgans did not treat her well, but Mrs. Doan said she sometimes spoke well of the Morgans, and referred to the fact that testatrix would sometimes like a person and sometimes would not (R. 25, 26).

Mrs. Mann says testatrix told her she was sorry she had gone to the Morgans, and to the fact that she did not treat her well, and in the same connection testified she did not get the kind of food she wanted (R. 37). It is hardly surprising that a woman of the age of testatrix, who had severe spells of sickness during her stay at the Morgans, would sometimes be discontented with the food provided for her.

Several witnesses for the caveators leave no doubt that these relations were friendly.

R. E. Doan says he saw nothing to the contrary and got this knowledge both from the testatrix and the Morgans (R. 25).

Charles H. Adams referred to a letter his aunt wrote him from the Morgans in which she told him how nicely she was situated (R. 24).

Mrs. Van Wickle was at the Morgans once and said their relations were apparently very friendly (R. 27).

Mrs. Seawell testified that she thought that Mrs. Morgan was very kind and attentive to the deceased (R. 38).

To the above must be added (R. 38) the understanding testified to by Mrs. Mann between the proponents and the testatrix while the latter was still at La

Fetra's, whereby in the event of testatrix' illness she was to be taken to the Morgans instead of to a hospital. It requires no argument to show that such an arrangement presupposed the most cordial relations between them and at the same time it furnishes a ready explanation as to why the testatrix spent the last year of her life at the Morgans.

Her nephew, Charles H. Adams, writing to Mrs. Morgan, September 28, 1904, uses this language: "I want to thank you (as well as I can) for your kindness to Aunt Julia, who has written me about yourself, her 'lovely new home,' and how nicely she was situated. Her last letter was devoted almost exclusively to a description of her pleasant surroundings, the freedom of your house, the quiet, the fresh air, but, above all else, being with friends" (R. 22). In another letter to Mrs. Morgan, dated June 22, 1904, Charles H. Adams uses language similar to the above, and then adds: "Cannot tell you how pleased we are to feel that she is with you. I had heard her speak of you and your husband so often that I felt almost acquainted, and when I was in Washington she spoke of running up to Mrs. Morgan's to spend the evening" (R. 23). The witness visited his aunt in Washington in December, 1903, which establishes beyond peradventure that the relations between his aunt and Mrs. Morgan were most cordial and were the subject of conversation between them at least eight months before she went to the Morgan home. It is true this witness says he only got one letter written by his aunt after she went to the Morgans (R. 22). Are we not justified in concluding that this letter was the one first quoted from above? If other letters, written by Mrs. Morgan at the dictation of the testatrix, referred also to a continuance of these

relations, is there any evidence to the effect that they did not equally reflect the friendly and affectionate attitude of the testatrix more perfectly than the alleged remarks of the testatrix made during conversations with such witnesses as Mrs. Mann and Mrs. Van Wickle, when no other person was present, and repeated at a time when the witnesses were secure from contradiction?

We conclude these observations by suggesting that caveators' testimony discloses that the will is along the line of established friendships and is not an unnatural testamentary disposition. Testatrix had been practically without a home since she came to Washington in the early sixties. The testimony of Mrs. Mann, though manifestly hostile to proponents, discloses the friendly relations existing between Mrs. Morgan and the testatrix prior to July 1, 1904, when the latter came to the Morgan home. This witness refers to an arrangement whereby testatrix was to go to the Morgan home for care and attention instead of a hospital in the event of her sickness (R. 38).

It would seem that these slight interruptions in the uniformly pleasant relations between testatrix and the Morgans ought to be effectually disposed of by the testimony of Judge Doan, who saw her "thousands of times in the last ten or twelve years", to the effect that the relations between them were friendly, which knowledge he got both from Miss Adams and Mrs. Morgan (R. 25).

That Mrs. Morgan showed every disposition to keep Chas. H. Adams—the only relative she had on earth with sufficient interest in her to inquire about her—frequently informed as to her condition throughout the stay of testatrix at the Morgans appears from his own

testimony (R. 23, 24). He was even apprised of his aunt's serious condition by Mrs. Morgan some time prior to her death, but he did not start to Washington until after he learned of her death (R. 23), having directed the Morgans to make all arrangements for the funeral, etc. It appears, however, he reached Washington in ample time to inaugurate a contest over his aunt's will, under which he takes more than he would in case of intestacy. In this contest he is not assisted, so far as the testimony is concerned, by his brother and sister, who content themselves by joining in the caveat.

e. There was some effort at the outset of caveators' testimony to show that the Morgans excluded some persons from the room of testatrix, which, if true, might be significant. Mr. Rheem testified that he called on Miss Adams in September or October, 1904, for the purpose of ascertaining whether she wished certain notes cashed in accordance with instructions received through Mrs. Morgan; that he was not permitted to see her (R. 34), and was told by Mrs. Morgan that the doctor had forbidden any one to see testatrix (R. 33). The only other occasion Mr. Rheem called he had no difficulty in seeing testatrix (R. 34). R. E. Doan, an old friend, testified he saw testatrix only once out of three or four calls. These calls he reduces to three on cross-examination, and says once he was informed she was in no condition to be seen, and on another occasion he testified that he and his wife were left alone with deceased, Mrs. Morgan excusing herself to go to church (R. 24, 25). His wife, Maria M. Doan, testified to having called only twice, and on both occasions saw testatrix, on one of which she and her husband were left alone with testatrix while the Morgans went

to church (R. 26). Annother witness, Mrs. Albenia Van Wickle, called on testatrix only once at the Morgans' and said during her interview with the testatrix Mrs. Morgan interrupted the conversation by coming into the room (R. 27). On cross-examination she testified Mrs. Morgan on one of these occasions came into the room once to arrange flowers witness had brought to the testatrix. She also testified that at the time of her call testatrix was a very ill woman (R. 27). Is it surprising that the person who occupied the relations to the testatrix of a traïned nurse should go in and out of the room during such a call? No other witness for the caveators testified to any difficulty in seeing testatrix alone. Mrs. Carmick on three occasions when she saw her alone, or oftener (R. 30). One of caveators' witnesses, Mrs. Mann—the most positive upon the question of testamentary capacity—testified she never had the slightest trouble in seeing the testatrix (R. 37). Another of caveators' witnesses, Mrs. Seawell, called three times and refers to no difficulty whatever in seeing testatrix.

Conceding the full force and effect of this testimony, it appears, first, that her business agents were refused admission once because of the physician's orders, and, second, that Mr. Doan could not see her once or twice because she was in no condition to be seen, but on another occasion was left alone with her and his wife, and, third, that Mrs. Morgan was in and out of the room several times during the call of Mrs. Van Wickle, who testified that upon the occasion of this call testatrix was a very ill woman, and it is to be recalled Mrs. Morgan was in charge of her, and probably thought she needed some attention.

It is to be observed with reference to this assignment of error that none of the circumstances relate

either directly or indirectly to any coercive measures attempted to be employed by the Morgans at the time of the making of the will or at any other time during their acquaintanceship; second, that all evidence of fraud and coercion was eliminated from the consideration of the jury by the instruction of the trial court (R. 87); and, third, that the strongest legitimate conclusion to be drawn from the caveators' evidence is that by affection and care the beneficiaries ingratiated themselves into the good graces of the testatrix. The record wholly fails to disclose any evidence of solicitation whatever, and no evidence of any influence, either direct or indirect, that would not be legitimate.

It is asserted with confidence that if all the above testimony constituting a possibility or suspicion of undue influence were uncontroverted or otherwise unexplained, it was not such as to be properly submitted to the jury to establish the fact of undue influence exerted at the time of the making of the will, and operating to overcome the judgment and the will of the testatrix.

In the case of Beyer *vs.* Le Fevre, cited above, the Court, speaking through Mr. Justice Brewer, used the following language on page 119: "at the same time there has always been recognized the right and duty of this Court to examine the record, and if it finds that the conclusions are wholly unwarranted by the testimony, it will set the verdict or report aside and direct a re-examination."

If this will is to be set aside on the ground of undue influence, there ought to be some evidence deducible from the record showing that the Morgans solicited or by undue importunity induced the testatrix to give them the legacies in question. Not a witness testifies

that they, or either of them, ever solicited the testatrix to give them a legacy.

It is not enough to say that testatrix was very friendly with the Morgans, or that one or both of them nursed her during her illness, assisted her in writing letters, or doing for her what her own physical infirmities prevented the testatrix from doing.

> "The undue influence for which a will or deed will be annulled must be such as that the party making it has no free will, but stands in *vinculis*. It must amount to force or coercion destroying free agency."
>
> Conley *vs.* Nailor, 118 U. S., 127.
>
> See also Towson *vs.* Moore, 173 U. S., 17, and Mackall *vs.* Mackall, 135 U. S., 172, 173.

We do not understand there was any evidence of undue influences such as is contemplated by these decisions, and we assert with confidence there was as much evidence in support of the issue of fraud and coercion, which issue by the instruction of the Court was eliminated from the consideration of the jury.

II.

Second Assignment of Error.

In granting the third prayer of the caveators, casting the burden of proof upon the caveatees in respect of undue influence, the prayer is as follows:

> "If the jury believe from the evidence that at the date of the paper writing offered as the last will and testament of the testatrix, and for a considerable time prior thereto, she had been and was

an inmate of the house of Decatur Morgan and Jennie G. Morgan, that she was of advanced age and of frail and feeble bodily health, requiring much care, nursing and attention, for which she had been and still was dependent upon them, as, also, for aid in and attention to her business affairs, and that they, or either of them, were active in respect to or connected with the preparation and execution of the said paper writing, the burden of proof is upon them to show by a fair preponderance of the evidence that the execution of the said paper writing was not procured by undue influence, in default whereof the answer to the third issue should be Yes."

Under this assignment of error the following propositions will be considered in the order in which they are stated:

1. Is the error embodied in this assignment "harmless error"?

2. Is the exception noted to this prayer sufficient to avail the plaintiffs in error?

3. Does the instruction, when considered by itself, state the law as to the burden of proof applicable to the issue of undue influence?

It is incumbent upon the plaintiffs in error to maintain the negative of proposition (1) and the affirmative of proposition (2) before this court can consider the propriety of the instruction as set forth in proposition (3).

1. Is the error embodied in this assignment "harmless error"?

The Court of Appeals of the District of Columbia refused to consider this assignment of error for reasons set forth on page 109 of the record:

"The conclusion at which we have arrived renders it unnecessary to consider the errors assigned

in respect of the issue of undue influence. The verdict on the issue of testamentary capacity being sufficient to support the judgment it would not avail appellants if error could be shown on the other. To obtain reversal, error would have to be shown in respect to both. There was no necessary connection between the determination of the two issues, and it is not perceived how error in respect of one could have prejudiced the appellants in the trial of the other. In view of the verdict upon the first issue a finding in their favor upon the second would be of no avail."

Without yielding our contention that it was error to submit the question of capacity to the jury at all, which is treated under a separate assignment of error in this brief, it is respectfully submitted that the authorities cited by the Court of Appeals of the District of Columbia in support of its refusal to consider the propriety of the instruction as to undue influence do not support the conclusion arrived at by that court (R. 169). The cases thus cited follow:

"When the answer in a question at law both denies the plaintiff's allegations and sets up matters in avoidance, and the jury returns a general verdict for the defendant upon all the issues, he is entitled to judgment, notwithstanding any error in rulings upon matters of avoidance (limitations, discharge in bankruptcy), or any statement of fact in that part of the answer setting up those matters or in a bill of exceptions to such rulings."

Glenn *vs.* Sumner, 132 U. S., 152, 157.

In other words, in the foregoing case it was held that finding that the defendant never subscribed for stock nor was liable to pay assessments, conclusively determines action for assessments in his favor, and a ruling

prejudicial to plaintiff as to effect of defendant's discharge in bankruptcy is immaterial.

> "A judgment will not be reversed because of an erroneous instruction to the jury, excepted to by the plaintiff, if the plaintiff could not recover in any event."
>
> West *vs.* Camden, 135 U. S., 508.

Here the Court in its opinion said the plaintiff could not recover under any circumstances, as the contract sued on was void against public policy—agreement by an officer of a corporation to hold another in his position in said corporation permanently (Ib. 520).

It is submitted that the correct rule is laid down in the following cases and is not at variance with those above cited and relied on by the Court of Appeals.

> "We concede it a sound principle that no judgment should be reversed in a court of error when the error complained of works no injury to the party against whom the ruling is made. But whenever the application of this rule is sought, it must appear to be so clear as to be beyond doubt that the error did not and could not have prejudiced the party's rights."
>
> Deery *vs.* Gray, 5 Wall., 807;
>
> Smiths *vs.* Shoemaker, 17 Wall., 639.

We confidently submit that, inasmuch as in will contests much of the evidence offered in support of one of these issues is also proper in support of other, a jury might well be misled where they are practically instructed to return a verdict against the will on one of these issues. Can it be said that an erroneous instruction to find the issue of undue influence against the will "works no injury" to the parties charged with this undue influence?

The view that there was a connection between this issue and that of capacity was brought prominently to the attention of the jury by the trial judge, in the following part of his instruction found on page 91 of the record:

> "So that you will have to measure the mind and the influence together in a case of this kind where you have these two issues. If a strong, healthy person of robust body and strong mind was charged or was said to have made a will by the undue influence of somebody else, then, of course, a jury would require a greater evidence as to the force of that influence."

The plaintiffs in error conclude their observation on this point by suggesting that the error was not "harmless," first, because the issue of undue influence was found against them because of this error; second, because this error influenced or might have influenced the jury in finding against the will upon the issue of capacity, especially in view of the language of the trial court in charging the jury, "so that you will have to measure the mind and influence together in a case of this kind where you have these two issues; third, assuming that this error, if it be such, did not influence the jury in its findings upon the issue of capacity, yet the plaintiffs in error by the verdict as it stands are held out to the world as persons who have procured the undue execution of a will in their favor; fourth, this error cannot be "harmless error," for the reason that the costs of this litigation, which are considerable, will have to be borne by the plaintiffs in error, if the verdict is permitted to stand upon both issues; whereas, under the authorities, such would not be the case if the verdict stood upon the issue of capacity alone.

2. Is the exception noted to this prayer sufficient to avail the plaintiffs in error?

The court below in its opinion cites the case of McDermott *vs.* Severe, 202 U. S., 600, 603, wherein it was held:

> "An exception of a general character to a charge covering a number of elements of damage will not cover specific objections which in fairness to the court should be called to its attention in order that it may if necessary correct or modify its instructions."

It is conceded that a general exception to the whole charge will not avail a plaintiff in error, where the charge contains distinct propositions and any one of them is free from objection.

Anthony *vs.* Louisville N. R. Co., 132 U. S., 172.
Rogers *vs.* The Marshal, 1 Wall., 644.

It is to be observed, however, with reference to the instruction complained of, that if it is incorrect in any of the propositions therein set forth, it is incorrect as a whole, and is therefore erroneous. The instruction recites in the conjunctive certain facts and directs the jury that the burden of proof is shifted if these facts are found for the caveators. Among other things, it presupposes that any "aid in and attention to her business affairs" constitutes confidential relationship. This we deny, and await the citation of a single authority to the effect that any "aid in and attention to" business affairs, not amounting to management of, or control over, business affairs, is equivalent to a relation of confidence.

The court should have advised the jury what "aid in and attention to" business was contemplated by the

instruction, and should not have left the jury to infer that any such aid and attention was sufficient. For instance, the jury might infer from this instruction that the writing of a business letter sufficiently met the language of the court. A similar comment might be made upon that portion of the instruction relating to the activity of the proponents "in respect to or connected with the preparation of" the will in controversy. We hold that the court should have advised the jury that if such "activity" was in pursuance of the free and voluntary instruction of the testatrix, no adverse inference could be drawn. It is also to be observed that the record fails wholly to disclose that the proponents of the will were ever temporarily in the management of the business affairs of the testatrix or that they exerted any activity whatsoever except at the request of the testatrix. We submit, therefore, that the vice of the instruction complained of was *apparent* on its face.

> "Although the exception fail to point out as erroneous any special part of the charge which was given, yet it is sufficient, where the errors of the charge are apparent, and there is no reason to suppose they were inadvertent, or might have been corrected if specified by counsel in time." * * * "But the whole charge proceeds upon a theory of the common law of carriers, as it regards the effect of the act of God, on the contract, so different from our views of the law of that subject, that it needs no special effor › draw attention to it, and it is so clearly and frankly stated as to have made it the turning point of the case."
>
> Memphis & C. R. Co. *vs.* Reeves, 10 Wall., 176, 189.

Moreover, the instruction complained of recited facts which went to the single point of the proper effect to be given to the relations between the proponents and the testatrix.

> "An exception to a whole paragraph of a charge is sufficient when the subject of the paragraph is the single one of the proper effect to be given to evidence of defendant's good character. A fair understanding of the meaning of the instruction cannot be reached without reading and weighing the entire paragraph."
>
> Edington *vs.* U. S., 164 U. S., 361, 365.

Moreover, the presumption predicated upon the facts recited in this instruction is a presumption of fact and not of law and it was error for the court to charge the jury that a certain state of facts creates a presumption of undue influence, and that unless the proponents of the will rebut this presumption, the jury must find against them. 16 Cyc., 1050; Page on Wills, Secs. 408, 414; Blackburn *vs.* Crawfords, 3 Wall., 175, 195.

We submit that the principle underlying this instruction finds no analogy in the case of McDermott *vs.* Severe, where the charge covered a number of elements of damage, any one of which would stand or fall independently of the other elements of damage set forth in the same charge. The instruction excepted to in the case at bar does not contain instructions on separate and distinct propositions, some of which are sound and some of which are unsound; on the contrary, the plaintiffs in error contend the instruction relates to one subject only and therefore cannot be separated in the manner contemplated by those cases, the authority of which we concede, which hold that an exception to a

series of propositions contained in a charge is sufficient if any one of the propositions is sound. In the language of the court in Edgington *vs.* U. S., no "fair understanding of the meaning of the instruction" can be reached "without reading and weighing the entire paragraph."

3. Does the instruction, when considered by itself, properly state the law as to the burden of proof applicable to the issue of undue influence?

This instruction is predicated upon the existence of confidential relations between the testatrix and the beneficiary of such a character, when coupled with activity on the part of the latter in the preparation of the will, as to shift the burden of proof, which would otherwise remain with the caveators.

In other words, this was equivalent to saying that the facts enumerated in the prayer amounted *in law* to a presumption of undue influence. It is not without significance that the issue as to fraud and coercion was by instruction of the court (R. 89) withdrawn from the consideration of the jury. It must be assumed, therefore, that the caveators will not contend that there was direct evidence in support of the issue of undue influence, which, under many of the authorities, is inseparably connected with fraud and coercion.

> "Placing undue influence along with fraud and circumvention interprets the character of the influence. *Noscitur a sociis.*"
>
> Beyer *vs.* Le Fevre, 186 U. S., 114.

Fraud employed in procuring a will, no less than coercion, may justify its being set aside. Both are equivalent to undue influence and both are usually

present in the same transaction. Underhill on Wills, page 215.

The record wholly fails to show any direct evidence in support of this issue. To justify the submission of this issue to the jury, counsel must rely upon the alleged confidential relations in connection with activity on the part of the Morgans in the preparation of the will.

The law as to burden of proof respecting conveyances *inter vivos* has no application whatever to wills, as to which it is established by the weight of authority that the existence of confidential relations between a testator and a beneficiary under a will is not enough of itself to raise the presumption of undue influence; in addition there must be activity on the part of the beneficiary in procuring a benefit for himself.

Underhill on Wills, Vol. 1, p. 207.

The instruction is objectionable:

First, because the presumption raised by this instruction is a presumption of *fact* and not of *law*, and it is error for the court to charge the jury that a certain state of facts create a presumption of undue influence, for presumptions of fact depend upon their own force and efficacy in creating conviction in the mind, and should not be aided by suggestions or intimations from the court as to what they do or do not prove.

16 Cyc., 1050; Blackburn *vs.* Crawfords, 3 Wall., 175, 195.

The above doctrine has been applied by the weight of authority to will contests in respect of instructions predicated upon confidential relationship and activity

in the preparation of the will on the part of the chief beneficiary.

Page on Wills, 408, 414;
Morton *vs.* Heidorn, 135 Mo., 608;
Patten *vs.* Cilley, 67 N. H., 520;
Stirling *vs.* Stirling, 64 Md., 138;
Griffiths *vs.* Diffendorfer, 50 Md., 466.
Coghill *vs.* Kennedy, 119 Ala., 659.

In the case of Patten *vs.* Cilley, *supra*, the appellate court approved the action of the trial court, which declined to instruct the jury that there was a presumption of law that the sole legatee, who was the confidential agent of the testator and assisted him in making the will, unduly influenced the testator, holding that "inferences of fact may be drawn against a confidential agent in cases like this; but there is no presumption of law against the agent, and the three points presented in the requested instruction might have led the jury to regard matters of fact as matters of law." (Ib. 528.)

An examination of the authorities will disclose, wherever there is a departure from the principle above enunciated, and a court undertakes, erroneously, as we think, to characterize evidence of this sort, the case is an extreme one, involving gross injustice in the will, actual fraud in its execution, or where the will is made under a palpable mistake of fact coupled with a relationship of confidence, which does not exist in the case at bar.

> "Here will was made on death-bed, faculties were enfeebled by a long and wasting disease, testatrix for a long time was under the active and controlling influence of the principal beneficiary,

entertaining against her only son a causeless antipathy, and unjustly expelled him from her home. The will originated with the chief beneficiary, who framed instructions, engaged counsel and superintended its execution. This will was made under a mistake of fact, involved gross inequality, apparent injustice and an entire departure from previous wills. Here the burden of proof of repelling undue influence was cast upon the caveatee."

Tyler *vs.* Gardner, 35 N. Y., 559.

"C, the sole business agent and confidential adviser of a woman of eighty who was simple-minded and timid and without family, induced her to sign a will without having it read to her, said will making C residuary legatee to the extent of $20,000, when he represented his interest would not exceed $2,000. Here the burden of proof was shifted to C. Here confidential relationship continued till death."

Lyon *vs.* Campbell, 88 Ala., 462.

"L, who was weak-minded and susceptible to slight influences, while a resident with A, one of his four brothers, who apparently dominated him, was attended by A to the office of a lawyer, where in A's presence he made his will, by which he gave his entire estate to A, to the exclusion of his other brothers, after which A took the will of L and retained it until after L died. Held, the burden was upon A to show that the instrument was executed without the exercise of undue influence. This will was also retained for years by the legatee after he had deeply wronged the testator, thereby causing the latter to threaten him that he would change the will. Here also legatee was silent and kept aloof from the witness stand."

Boisaubin *vs.* Boisaubin, 51 N. J. Eq., 252.
See also Hoopes Estate, 174 Pa. St., 313;
Tibbe *vs.* Camp (Mo.), 54 S. W., 879.

Second, because no such confidential relations existed as to justify the court in saying to the jury that the burden of rebutting the presumption of undue influence was upon the caveators.

Was the testatrix, as indicated by this instruction, dependent upon the Morgans "for aid in and attention to her business affairs?" It is submitted, while the testatrix on several occasions attempted to entrust her business affairs to Mrs. Morgan, this attempt was never accomplished. The evidence establishes beyond question that Swartzell, Rheem & Hensey attended to her business for twenty years continuously up to the time of her death, and that from 1900 until the making of the will in October, 1904, prior to the one in controversy, she had an attorney of her own, who drafted several wills for her and whom she consulted from time to time professionally. Besides, testatrix had a lock-box in the Washington Loan & Trust Company from 1891, and was the sole person who had access to this box until June 29, 1904, when a power of attorney to enter the same was executed in favor of Mrs. Morgan, who never used it, but got the contents of the box in pursuance of a special order given her by the testatrix on October 7, 1905 (R. 28, 29), and after having them in her possession about ten minutes, which was consumed in taking them from the Washington Loan & Trust Company to the testatrix, who put them in a tin box in her room, the key to which she kept around her neck (R. 80). On October 10, 1904, Mrs. Morgan took a message in the form of a note to Swartzell, Rheem & Hensey from the testatrix requesting Mr. Rheem to let Mrs. Morgan have money on certain notes which were enclosed. Mr. Rheem declined to honor this order. On October 25, 1904, the testatrix gave

Mrs. Morgan a general power of attorney, authorizing her, among other things, to collect proceeds of notes therein designated. Besides, this power of attorney was not honored, and Mrs. Morgan never attempted to make use of it again, but thereafter, on November 28, 1904, carried a note, in the handwriting of Mrs. Morgan, but signed by testatrix, to Mr. Rheem, from the testatrix, requesting that the Blundon notes be cashed (R. 31). This letter Mr. Rheem also declined to honor, and thereafter up to the time of the death of the testatrix, which occurred on June 26, 1905, Mrs. Morgan made no attempt whatever to attend to the business of the testatrix, except to write certain letters at her dictation, address envelopes for the church, and to get certain drafts cashed for her at the offices of Swartzell, Rheem & Hensey. The record, therefore, discloses that prior and subsequent to the execution of the will, on February 11, 1905, a condition that continued up to the death of the testatrix, the Morgans had nothing whatever to do with the management of the business affairs of the testatrix, her efforts to clothe them with authority in this respect having proven unavailing, and the statement of Mrs. Morgan that she was "private secretary" to the testatrix can only refer to the duties of an amanuensis, writing letters to the nephew and friends of the testatrix, advising them as to her condition, putting her name on church envelopes, and the carrying of certain drafts of the testatrix to her business agents to get them cashed. It nowhere appears from the record that the testatrix was dependent upon the Morgans for attention to her business affairs; on the contrary, these affairs remained in the exclusive control of her agents, Swartzell, Rheem & Hensey, and such attention as the Morgans actually

gave them could have been attended to by a child twelve years of age or by the testatrix herself, with the exception of the period when she was not well enough to go to the office in person to get her drafts cashed. Mrs. Morgan simply acted as her amanuensis. It appears, however, in May, 1905, the month prior to her death, the testatrix did go to the office alone, received some interest money and signed for the same without assistance (R. 31).

The authorities are slow to hold, where the confidential relation is not a technical one, but informal, as in case of nurse and patient, coupled with activity on the part of the beneficiary in the preparation of the will, that there is such a relation of confidence as is contemplated in the rule now under consideration, assuming, of course, it is ever proper to invoke the application of such a rule, which we deny.

> "In this case testatrix, aged 83, made a will ten days before her death, months prior to which time she was in feeble health, and died from the effects of cancer. She was suffering constant pain and paroxysms and prostrated in bed at the date of the will. The beneficiaries got more than one-half of the estate, the balance going to relatives. The attorney who drafted the will was called for that purpose by the beneficiary and bolstered testatrix up in bed to sign it. The evidence was that she would at times look deathly, and her eyes would be closed. Her kindred were living in other States, and the beneficiaries came to her aid in her last illness. Here the Court said: 'They occupied her house and were caring for her and nursing her in her illness, but we do not understand by reason of these facts they stood in any fiduciary relation.'"
>
> McMaster *vs.* Scriven, 85 Wis., 172.

In the case of Adams' estate, 201 Pa. St., 502, 509, the beneficiary was a friend with whom testatrix had boarded for many years, and the son of the beneficiary was a physician, who wrote the will for her. The testatrix made repeated statements to strangers that she intended to dispose of her property in this way. The physician went to the Trust Company occasionally to have some checks cashed for the testatrix, and in one or two instances looked over some old papers for her. Here the Court held that there was not sufficient evidence to justify the assertion that he was the confidential adviser, and as a physician he only attended testatrix in her last illness.

Third. This instruction is further objectionable because it is predicated upon the theory that the existence of confidential relations between the testator and the beneficiary, coupled with *any* activity on the part of the latter in the execution of the will, is sufficient to change the burden of proof. An instruction similar to the one granted in the case at bar was asked for and made the point of exception by the contestant in the case of Eustis *vs.* Montgomery, 95 Ala., 489. Here the Court, in denying the propriety of such instruction in affirming the court below, used the following language:

> "The existence of confidential relations between the testator and the principal or large beneficiary under the will, coupled with activity on the part of the latter in and about the preparation and execution of the will, such as the initiation of proceedings, employing the draughtsman, selecting the witnesses, excluding persons from the presence of the testator * * * and the like, will raise up a presumption of undue influence, and cast upon him the burden of showing that it was not induced

> by coercion or fraud on his part, directly or indirectly. * * * Such activity, not of proponent's motion or prompted by personal motives, but in behalf of testatrix, and in furtherance of her purposes, will not combine with confidential relations to shift the burden of proof as to undue influence upon the proponent, * * * and because of this, the charge was misleading; the activity shown by the evidence was not of a character to support the conclusion." (Ib., 493.)

To the same effect is Henry *vs.* Hall, 106 Ala., 88, 98, where the court said:

> "Although the facts predicated in these charges may be true, yet if the jury believe from the evidence that Green B. Jenkins, in all he did, acted under the free and voluntary instructions of testatrix, the facts predicated in these charges would not satisfy a conclusion adverse to the validity of the will."

This instruction is also objectionable because any inference that might be drawn from the recitals of fact therein is met and explained by the undisputed testimony as disclosed by the record. The instruction fails to take any account of the established facts, which are substantially as follows:

1. That the "aid in and attention to" the business of the testatrix was by way of assisting testatrix in writing letters at the dictation of the latter or getting checks cashed for her at her business agents, and at no time partook of control over or management of her business affairs, which continued until her death to remain in the hands of Swartzell, Rheem & Hensey (R. 31, 35, 71).

2. That the activity of the proponents in the preparation of the will was at the request and with the approval of the testatrix (R. 65, 66, 74).

3. That neither of the proponents were present at the execution of the will, the witnesses to the same being disinterested parties, who were requested to witness the will by the testatrix, to whom the will was read before its execution, and both of them testifying that the testatrix directed them to witness the same (R. 60, 61).

4. The will remained in the possession and under the control of testatrix until her death. Thus she had ample opportunity to destroy, alter or revoke the same (R. 74, 79).

Shaller *vs.* Bumstead, 99 Mass., 125.

5. The will was in accordance substantially with the testamentary intention of the testatrix with reference to the Morgans expressed to several witnesses, both before and after the will was executed (R. 45, 74, 76).

6. That the will was a natural one because of the relations of intimacy existing between the proponents and the testatrix disclosed by much of the testimony of the caveators as well as by all of the testimony of the caveatees.

7. The testatrix came to the home of the proponents and thus became the object of their care and attention, because the testatrix did not wish to be buried from the boarding-house in which she was stopping, and exacted a promise from Mrs. Morgan, one of the proponents, that in the event of her sickness and death she was to be taken to the home of Mrs. Morgan, from which the funeral was to be conducted (R. 38, 49, 71).

III.

Third Assignment of Error.

In refusing the fifteenth prayer of the caveatees, which instructed the jury that the burden of disproving undue influence cast upon the caveatees by the third prayer granted on behalf of the caveators was fully met by the evidence that no such influence was exerted (R. 88).

The contention embodied in this assignment of error is just as strenuously insisted upon as all other assignments of error herein, but any extended discussion is unnecessary in view of the consideration already given to the question of undue influence in connection with assignments of error numbered 1 and 2. Conceding, for the purpose of argument, the accuracy of the proposition of law embodied in caveators' prayer No. 3, fully set forth under assignment of error No. 1, which was designed to relieve the caveators from the necessity of introducing evidence of undue influence exerted and operating upon the mind of the testatrix at the time the will was made, it is nevertheless respectfully submitted that the burden thus improperly cast upon the caveatees, as we contend, was fully met by the testimony of the caveatees, already been adverted to and commented upon under the first and second assignment of error.

IV.

Fourth Assignment of Error.

In refusing to instruct the jury to return a verdict in favor of the will in respect of the issue of mental capacity (R. 88).

Appellants concede there was some evidence tending to show mental weakness on the part of the testatrix, but they say, first, that such evidence, considered by itself, was insufficient to establish the fact of incapacity, and, second, that even this testimony is overthrown by its own inconsistency and by other positive evidence, overwhelming in its nature, offered on this point on behalf of the caveators.

If the case stood on the issue of capacity alone there could be no question that there was no evidence to warrant a finding that such incapacity existed. Railroad *vs.* Seley, 152 U. S., 145; Randall *vs.* Railroad, 109 U. S., 478; Schofield *vs.* Railway, 114 U. S., 615; Gunther *vs.* Ins. Co., 134 U. S., 110; Bunt *vs.* Gold Mine Co., 138 U. S., 453; Railway *vs.* McDonald, 152 U. S., 262.

Upon this issue of capacity the caveators' testimony develops two significant circumstances.

1. The capacity of the testatrix to make a will at the time she went to the Morgans on July 1, 1904.

Charles H. Adams, her nephew, saw her in December, 1903, and merely calls attention to the fact that his aunt failed to locate the old room at the Treasury and forgot other things she wanted to show him and wrote him once to find out what his full name was (R. 22). He also refers to one letter from testatrix, received after July 1, 1904, in which she tells him how nicely she was situated there, and otherwise intelligently discussed her pleasant relations at the Morgans (R. 24).

R. E. Doan, when asked if she was of sound mind, said it would be difficult to tell, and that he had grave doubts about it, but referred to her increasing forgetfulness during her later years, to her stubbornness and her incoherency (R. 24).

Maria M. Doan referred to her forgetfulness and febleeness of mind during her last year at hotel, and to her changeableness (R. 26), but stated on cross-examination she did not regard her failing mind as anything unnatural for one of her years (R. 26).

Dr. James P. Saffold, while he says he noted symptoms of paresis on the occasion of his last professional visit, four or five years before her death, yet he saw her again on New Year's, 1903, and failed to state that he noticed any symptoms whatever of paresis. He then practically concedes her capacity by saying he never did anything in pursuance of power of attorney which was given him Dec. 15, 1898 (R. 27, 93), which, among other things, clothed him with full power to take charge of her affairs in event of her inability to do so. His good faith must not be impeached in the discharge of such an important trust, and we are bound to accept his statements that when he saw her in January, 1903, a year and a half before she went to the Morgans, that there was no occasion to use this power of attorney (R. 27).

Mrs. Albenia Van Wickle did not see her at La Fetra's (R. 27).

James A. Black, the clerk at La Fetra's Hotel, who probably saw as much of her during her stay at that place as any one and who surely would have been a good witness upon the question of capacity, is not even asked a question as to her capacity prior to her leaving his hotel for the Morgans (R. 28).

Henry J. Gross, a bookkeeper for Swartzell, Rheem & Hensey, was only able to say, when asked as to her mental and physical condition, that sometimes she would have to go to the lock-box at the Trust Company as many as three times to get the right note, but that

she always got the right note finally and that no one helped her to get it (R. 31), and as late as the month preceding her death she came to the office and transacted business with him, getting $30.00 and signing without assistance a receipt therefor (R. 31).

Clarence B. Rheem, the member of the firm managing her business, who seemed to have the most to do with her in a business way during this period, said he did not become suspicious that anything was wrong until after she went to the Morgans, when in September, 1904, he refused to cash some notes for her (R. 32, 34).

This witness must have been fully satisfied that the testatrix was capable of transacting business when she got $2,250 in notes cashed, for which purpose she went to his office in person and alone (R. 32).

George W. F. Swartzell, another member of the firm, never had any personal transactions with the deceased whatsoever during this period (R. 36).

Mrs. A. W. McCreary gives her mentally a clear bill of health by saying that the very last conversation she had with the testatrix before the latter went to La Fetra's was *most* delightful, amicable and charming (R. 36).

Mrs. Ella S. Scott, who knew her for six or eight years before her death and ate at the same table with her at La Fetra's, testified testatrix was sensible and intellectual when she first knew her, but did not seem the same person at all at the Morgans, failing absolutely to indicate any mental deficiency whatever before testatrix went to the Morgans (R. 37).

Miss Mary E. Mann saw testatrix several times prior to October, 1904 (it does not appear whether this was before she went to the Morgans), when she was feeble

in her health and her mind was weak, a statement not inconsistent with capacity to make a will.

Mrs. Marian C. Seawell did not know the testatrix until she went to the Morgans (R. 38).

The only witnesses for the caveators, who testify as to a lack of capacity of testatrix before she went to the Morgans are Mrs. Malvinia G. Carmick and Mr. A. W. McCreary, and their conclusion is based upon conversations with her at La Fetra's, the latter having only casual conversations with her (R. 29, 36). Judge Doan said she was growing more forgetful before leaving La Fetra's and would repeat things (R. 24), while Mrs. Doan said that during the last year at the hotel she was growing more feeble in mind (R. 26).

We conclude this summary, therefore, by the observation that the attitude of the business agents towards the testatrix in their business dealings with her prior to and on July 11, 1904, is sufficient to repel any presumption as to her incompetency during this period. To this significant attitude of her business agents must be added the testimony of other witnesses called to attack her capacity, namely, Messrs. Doan, Saffold, Black, and Mrs. A. W. McCreary, as set forth above; and no one from the Washington Loan & Trust Company is produced to attack her capacity on June 29, 1904, when she gave Mrs. Morgan a power of attorney to enter her lock box, which power of attorney was witnessed by the custodian of the vault.

2. The caveators' testimony further establishes that of sixteen witnesses against capacity, four, Chas. H. Adams, Dr. Saffold, Mr. and Mrs. McCreary, never saw testatrix after July 1, 1904; that four others, Messrs. Doan, Edson, Swartzell, and Mrs. Van Wickle, saw her only once during this period, three others,

Mrs. Doan, Mr. Black, and Mrs. Seawell, saw her only three times.

Of the remaining witnesses only two, Mrs. Carmick and Mrs. Scott, saw her with any frequency at the Morgan home, and they saw her when she was sick. The other witnesses saw her several times but with no frequency, and generally when she was sick or just recovering from a spell of sickness. This situation becomes significant when it is considered that many people called daily at the Morgan home to see testatrix, and were able to see her whenever she was well enough or wished to be seen.

> "The opinions of witnesses as to her mental capacity are of no weight, unless sustained by facts on which such opinion are founded; and those who saw her seldom or but once * * * and say she was silent and appeared absent-minded gave little aid in determining this question."
>
> Waddington *vs.* Buzby, 45 N. J. Eq., 173-174.

The testimony of the firm of Swartzell, Rheem & Hensey upon the question of capacity is, perhaps, by virtue of the business relations sustained by this firm to the testatrix, the most important offered to show testator's incapacity. This testimony loses its significance when analyzed.

First, Mr. Rheem thinks something wrong with testatrix as early as September, 1904, when her vacillation as to withdrawing moneys from him was first manifested, coupled with a statement by her that the Morgans were robbing her, finds this impression is strengthened when Mrs. Morgan, at the instance of Miss Adams, presents certain securities for collection and an order for withdrawal of business from his hands. Yet, knowing the address of the nephew, Chas.

H. Adams, he makes no effort whatever to communicate with him, although about this time he says he consulted his attorney as to lunacy proceedings. He stands alone in any attack upon her sanity, although thirty-nine witnesses testify besides himself.

Second, about Nov. 30, 1904, he discusses lunacy proceedings with his attorney, and from this time till the death of testatrix honors every draft drawn on him by testatrix, transacts the customary business with her, cashing her last draft on June 14, 1905, a few days prior to her death (R. 35).

Third, as to a most significant part of statement alleged to have been made to him by testatrix in September, 1904, when the latter told him the Morgans were robbing her (R. 32), he is not corroborated by his bookkeeper, who, having testified before Mr. Rheem and having refreshed his memory over night, failed to say anything about hearing testatrix say she was being robbed.

Fourth, when he called on testatrix on November 28, 1904, he said she was not strong enough to discuss business affairs, yet he did proceed to discuss business affairs with her and actually asks for and gets her consent to his firm's continuing as her agents (R. 35, 85).

Her competency to discuss business affairs at this time, November 28, 1904, is further established by the testimony of another member of this firm, Mr. Swartzell, who testified that he accompanied Mr. Rheem to see testatrix on this occasion to discuss her business, and that they did so (R. 36, 85). It is fair to add that this witness gained the impression from this brief interview that she was not in a fit condition to manage her affairs mentally and physically but particularly physically (R. 36).

The capacity of the testatrix to transact business is further established by the testimony of the bookkeeper of this firm, Mr. Gross, who said that in May, 1905, a month prior to her death, testatrix came in the office to get $30 and signed the receipt therefor without assistance.

Was the Deceased Suffering with Paresis?

The only witness who gives it as his opinion that such was the case is Dr. James T. Saffold, who testified that she had symptoms of progressive paresis, that he noted these symptoms four or five years before her death on the occasion of his last professional call. It is to be observed, first, with reference to the testimony of this witness, that he was not a specialist on diseases of this sort and that his practice was outside of office hours and during his thirty days' leave, he being a clerk in the Treasury Department. It is quite remarkable that, while this witness saw the deceased on Christmas or New Year's of 1903, he failed to state that he noted any symptoms of paresis, which he said he had noticed a year or so before (R. 27). The weight of his testimony is further destroyed by his failure to make use of a general power of attorney given him by the deceased on December 15, 1898, assigning as a reason for his failure to do anything in pursuance thereof the fact that he never had any occasion to.

> "Capacity to attend to business is evidence of capacity to make a will." Underhill on Wills, p. 114, and cases cited.
>
> "It is not material that the testator delegated the active control of his business to others while retaining the ownership and actual management. (Ib. 114).

> "Nor is it necessary to show that he conducted his ordinary business affairs with the same vigor and attention as formerly or with the same success."
>
> Meeker *vs.* Meeker, 75 Iowa, 352.

Indeed the wills of aged persons are regarded with favor by the law.

> "The power residing in an aged person of making a testatmentary disposition of his property for the benefit of those who care for him and who fill his declining years with comfort is a most efficient means of procuring the care and attention which his physical infirmities demand."
>
> *In re* Humphrey, 26 N. J. Eq., 513;
> Deering *vs.* Adams, 37 Me., 264.

The case of Beyer *vs.* Le Fevre, 186 U. S., 114, is again adverted to in this connection. While the jury found in favor of the capacity of the testator in that case to make a will, but that it was obtained by undue influence, it is submitted that the evidence was just as strong in favor of the former issue, and it is fair to infer from a careful perusal of the opinion of Mr. Justice Brewer that a finding of the jury against mental capacity would have been set aside with no less difficulty.

It is submitted, therefore, that the judgment of the court below should be reversed.

E. HILTON JACKSON,
Attorney for Plaintiffs in Error.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1908.

No. 50.

DECATUR MORGAN AND JENNIE G. MORGAN,
PLAINTIFFS IN ERROR,

vs.

CHARLES H. ADAMS, FRANK W. ADAMS, AND CARRIE M. ADAMS, DEFENDANTS IN ERROR.

BRIEF FOR DEFENDANTS.

Statement.

The case below was a contest over the paper-writing, bearing date the 11th day of February, 1905, purporting to be the will of Julia M. Adams, who died June 24, 1905. The issues of *non est factum* and fraud were withdrawn by the caveators, the issues of mental incapacity and undue influence were found adversely to the will by the jury, and from the judgment upon the verdict, denying probate, the present appeal is taken.

Miss Adams obtained a minor clerkship in the Internal Revenue branch of the Treasury Department some time in the sixties, which she retained until late in the nineties, when, because of her advanced years, she was dismissed. Notwithstanding the smallness of her salary, she had, by

self-sacrifice and economy, amounting according to some of the witnesses to penuriousness, accumulated a small capital of about $10,500, the principal of which, until within the last year of her life, she had never been known to encroach upon except in a single instance, namely; her nephew, the appellee Charles H. Adams, being engaged in the effort to secure a small home for himself in Connecticut, the testatrix, in or about the year 1894, withdrew $1,000 of her principal from the hands of her agents, the B. H. Warner Company, and loaned it to her nephew to aid in the purchase of his home, taking a mortgage upon the property, but with an agreement that he need pay neither interest nor principal unless or until called upon by her to do so.

For many years, both before and after her retirement from office, and until within the last year of her life, the testatrix boarded at the La Fetra hotel, paying $35 for her room and board, and maintaining herself strictly from the income of her remaining estate of about $9,500, invested with the B. H. Warner Company at rates of interest varying from 5 to 6 per centum. About July, 1904, she left the La Fetra for the home of the appellants, where she paid the same price for her room and board, but simultaneously began making heavy inroads upon the principal of her capital, transferring it in large sums to Mrs. Morgan, by gift as the latter alleges.

The manner of her removal to the home of the Morgans is described by the appellant Decatur Morgan at page 62 of the record, namely, that for about a month prior to the removal, she was virtually all the time at their house, coming before they had finished breakfast, staying practically all day, returning and remaining until 9 o'clock at night; that about this time she expressed a wish to come and occupy rooms in their house, they being engaged in the business of letting lodgings; that appellant and his wife did not think favorably of this arrangement at first, but that she kept coming, and was there virtually all the time; that upon one

Sunday afternoon he and his wife, returning from an outing, found her in the vestibule of their house, sitting on the little narrow strip, waiting for them; that she stated she had become ashamed to have people see her sitting on the steps of their house and had come inside the vestibule; that it was a hot night, the testatrix was almost exhausted, and Morgan had almost to take her in his arms and remove her to the parlor, so that he told his wife they might just as well let her come to the house, as she was there practically all the time, anyhow, they having most of the care of her while she was paying other people for that care. A different version is given by Mrs. Morgan, which will be found at page 68 of the record. Two wills were made during the year that she was an inmate of their house, one in October, 1904, by which a thousand dollars was given to each of the appellants and the rest of her property divided among the appellees, her nephews and niece, who were her next of kin, and the other in February, 1905, by which the appellee Charles H. Adams was given substantially his one-third share of the estate, and the residue, less a legacy of $250 to the Epiphany Church, was given to the appellants.

Notwithstanding the voluminous record, the only exceptions presented by the appeal are to the refusal of the court to grant three instructions offered by the caveatees, and the granting of one offered by the caveators. The rejected instructions are, in effect, first, that the evidence was insufficient to justify a verdict that, at the time of the execution of the will, the testatrix was not of sound and disposing mind, capable of making a valid deed or contract; secondly, that there was no evidence of undue influence, and, thirdly, that, as a matter of law, the testimony of the appellants established by a fair preponderance of the evidence that undue influence had not been exerted. The instruction on behalf of the caveators to which the appellants excepted was in effect that, if, at the time of the execution of the will, the testatrix was an inmate of the home of the appellants, that she was of ad-

vanced age and of frail and feeble bodily health, requiring much care, nursing, and attendance, for which she had been and still was wholly dependent upon them, as also for aid in and attention to her business affairs, and that they or either of them were active in respect to or connected with the preparation and execution of the will, which gave the bulk of her estate to them, the burden of proof was upon them to show by a fair preponderance of the evidence that its execution was not procured by undue influence.

The Jurisdiction.

A preliminary question is presented as to the standing of the plaintiffs in error in this court to prosecute their appeal. The interest of the plaintiff Jennie S. Morgan consists of a pecuniary legacy of $3,000, and a specific legacy of certain jewelry, clothing, and books of the value of $144.50, the amount of the two legacies, together, being $3,144.50. The legacy of the plaintiff, Decatur Morgan, is $1,000. If the two could be tacked for the purpose of conferring jurisdiction, their aggregate would be but $4,144.50, or nearly $1,000 less than the amount necessary to confer jurisdiction. If they cannot be combined for that purpose, nearly $2,000 of the necessary jurisdictional amount is lacking. The remainder of the estate, the total value of which is $7,394.50, goes to the defendants in error, under the provisions of the will, with the exception of $250 bequeathed to the Epiphany Church. The question is raised in the record, at pages 110-111, though if it were not raised this court would of itself take notice of it. That the authorities relied on below to support the jurisdiction are insufficient to do so is plain. In Overby *vs.* Gordon, 177 U. S., 214, 218, the defendants in error would have been entitled to appeal if the will were defeated as representing all interests under it, and it was held that the plaintiffs in error, representing all interests, if it were defeated, should have the like right. In Shields *vs.* Thomas, 17 How., 93, the defendants in error, under the

same title and for a common and undivided interest, had recovered judgment against an administrator for more than the jurisdictional amount, and he was held entitled to maintain his writ. In New Orleans Pacific Ry. *vs.* Parker, 143 U. S., 42, 51, the defendant, moving to dismiss, represented himself and other bondholders under the same mortgage, their interests largely exceeding the necessary amount to confer jurisdiction. In the case at bar the plaintiffs in error do not represent the entire estate, nor any such part of it as will make up the necessary $5,000.

The questions arising upon the writ of error, if jurisdictionally maintainable, are four, namely:

I. Was there evidence to go to the jury upon the question whether the testatrix was of sound and disposing mind, capable of making a valid deed or contract?

II. Was there evidence to go to the jury upon the question of undue influence?

III. Did the testimony on behalf of the appellants, as a matter of law, establish by a fair preponderance of the evidence that undue influence was not exerted, and make it the duty of the court to direct a verdict in favor of the caveatees upon that issue?

IV. Was it error to instruct the jury that, if the testatrix was an inmate of their home at the time of the execution of the will, of advanced age and in frail and feeble bodily health, requiring much care, nursing, and attendance, for which she was dependent upon them, as also for aid in and attention to her business affairs, and that they were active in respect to or connected with the preparation of the paper-writing offered in evidence, in which they are the principal beneficiaries, the burden of proof is upon them to show by a fair preponderance of the evidence that its execution was not procured by undue influence?

It will, perhaps, tend to clearness to group under these several propositions the further facts of the case, applicable to each of them.

I.

In the first place, was the evidence as to mental incapacity of the testatrix sufficient to justify submission to the jury?

The testimony upon this point may be classified as of a twofold character, namely:

1. The opinion evidence in the case, comprising the opinions of witnesses who had long known and been familiar with her, as based upon her conversations, manner, deportment, and general bearing, detailed in the evidence, and as compared with her character in these respects up to within the last year of her life.

2. The actual business doings or performances of the testatrix during the last year of her life, as established by the proofs in the case.

1.

The appellee Charles H. Adams visited the testatrix in Washington about four months before the execution of the will, on which occasion she endeavored to take him to her room in the Treasury Department, in this city, where she had worked for thirty or forty years, but was unable to find it, and finally left the building without showing it to him, forgetting also other things which she desired to show him, nor did she remember his name, but wrote to him for it, these conditions being quite different from the kind of woman she had been four or five years previously, when she was very bright about knowing what she wanted to do (Record, 22).

Judge R. E. Doan, who had known her since 1894 and had transacted business for her, testifies rather more fully than is stated in the opposing brief (p. 361) that, before she

left the La Fetra for the Morgans', she was growing more and more forgetful; would repeat things; would tell you something and in a short time repeat it, having apparently forgotten what she was saying; that her mind was quite weak, very different from what it had been before; that it was difficult for her to connect subjects; that he had very grave doubts about her mind being sound; that, if you humored her, she would do almost anything, though if you crossed her she would be stubborn; that her mind was growing weaker from year to year; that she was incoherent and could not connect well; would tell things of no consequence two or three times over, then come back to warn against their being repeated; that her mental condition was pretty poor; that she could not connect two or three sentences very well, and that she was then between eighty and ninety years of age (Record, 24-25).

Mrs. Doan, whose evidence is also somewhat minimized in the brief for the plaintiffs in error (p. 27), testifies that she seemed very forgetful of things; that for the last year or more before testatrix left La Fetra's she noticed she was growing feeble in mind; that she would not have taken her to be a woman very capable of looking after business matters or anything; that she would sometimes speak well of the Morgans, and at other times say that they did not treat her well or provide her with enough to eat; that she became changeable after her weakened condition of mind; that she came back to La Fetra's to try to get a room, desiring to return there, saying that she did not like it at the Morgans', felt more at home at the hotel, and was hungry for a cup of coffee, which the manager gave her.

Dr. James T. Saffold testified that, when he visited her in 1895, her mental characteristics were high, mind clear, and a good conversationalist; that he was her physician until four or five years before her death, and noticed indications of senile degeneracy and progressive paresis, manifesting themselves in incoherency in talk and disconnected sentences,

paresis being a disease from which people do not recover, but the progress of which is from worse to worse (Record, 26-27).

James A. Black, hotel clerk at the La Fetra, testified that on three different occasions after going to the Morgans', Miss Adams returned to the hotel, stating that she wanted to come back; that she was discontented, dissatisfied, and unhappy; that on each occasion he agreed to give her back her old room, which she desired; that she did not return on any of these occasions, and that on one of them the postal card at page 28, conceded to have been written by Mrs. Morgan, though signed by Miss Adams, was sent him.

John Joy Edson, president of the Washington Loan and Trust Company, where testatrix had a safe-deposit box, and who had known her for 30 years, testified that she had formerly been very bright; that he saw her shortly before October, 1904, and noticed how feeble she was—seemed to be forgetful and disconnected in her conversation, striking him very forcibly; that she appeared to him then to be in very bad shape for taking care of her money, and as needing some one to look after her (Record, 28-29).

Mrs. Carmack testified that before leaving the La Fetra she had visited testatrix, who seemed scarcely conscious that she was with her, and told her on her next visit that she had not been sure about it; that for quite a while before leaving the La Fetra her memory was failing very fast; would repeat herself often, tell the same things twice in a few moments and seem unconscious of it; that she had a weak, feeble, almost childish expression and manner, and needed some one to look after her, as would a little child; that she saw her in February, 1905, the month in which the will was executed, at which time she seemed to be mentally incapacitated in every way and practically dependent; that she noticed a very great deterioration in her mind after she went to the Morgans', particulars of which are detailed in her testimony (Record, 29-30).

Mr. and Mrs. A. W. McCrary, who were fellow-guests at the La Fetra, and the latter of whom is stated in the op-

posing brief (p. 38) to have given the testatrix "mentally a clear bill of health," testified that she was a very old lady, seemed childish and getting worse as time went on, not considered able to take care of her business at the time she left the hotel; that she was exceedingly frail, childish and forgetful, repeating the same story over and over again in a few minutes, apparently having no control of her memory, and also detailing instances (Record, 36).

Mrs. Ella S. Scott (see opposing brief at p. 38), who had known testatrix for six or eight years, and saw her about once a month from January, 1895, until she died, testified that she would say the same things over every time witness would see her; that she was childish, was forgetful; that she would start to tell you something, stop off, interject unconnected matter, and then go on with what she was going to say or something else, and that she told witness about getting lost in trying to come from Warner and Company, 916 F street N. W., to the home of the Morgans, on G street near 11th, and that she had to ask some one to take her home (Record, 37).

Miss Mary E. Mann, a friend of many years, testified that as far back as October, 1904, her conversation was incoherent; that she was feeble in health and in mind (Record, 38).

Miss Seawall testified that she was feeble, that she was failing mentally, and she often repeated things that she had just a little before stated.

If, as seems to be contended by the caveatees' exception to the rejection of their 15th instruction (Record, 88), the preponderance of evidence is a question of law to be determined by the court, we think it would not be difficult to establish that, while the caveatees introduced a number of witnesses to testify to the mental competency of the testatrix, in their opinion, the preponderance of the evidence upon this point was with the caveators. Their testimony differs from that of the witnesses for the caveators in that, almost without exception, the opinions of the former were not supported by any acts or conversations testified to by them

of sufficient character to give support to the opinions stated, while the testimony of a number of them is on the whole quite unfavorable to the case of the caveatees. Two physicians, Dr. Ellyson and Dr. Atkinson, for example, testify that they considered her of sound mind, and that there was no indication whatever of paresis, as testified to by Dr. Saffold; but on cross-examination both of them substantially admit that the facts and circumstances proven, not by one, but by a number of witnesses on behalf of the caveatees, would strongly point to that condition and to mental incapacity (Record, 56, 57-59).

Dr. McKim, the pastor of the testatrix, testifies that she told him that, by what was evidently the October, 1904, will, she was giving to Mr. and Mrs. Morgan a legacy for life; that he examined the will and told her that it was not a legacy for life, but an absolute bequest, to which she replied that that was not her intention, and his impression is that she told him she intended to change the will in that respect (Record, 60, 63); that he told her he was sorry she had not remembered Epiphany Church, and that he possibly might have suggested to her that she still could do this by a codicil; whereupon the will of February 11, 1905, was made, with the assistance of the Morgans, who were also members of the Epiphany Church, and with the result that, instead of $2,000, as under the October will, the Morgans got about two-thirds of the estate, and not for life, but absolutely as in the prior will, which the testatrix declared was contrary to her intention, and, according to the recollection of the witness, a particular in which she meant to change it.

2.

But, in the second place, upon the question of mental incapacity, the case does not rest upon the opinions of witnesses, corroborated or uncorroborated by evidence of facts supporting them, as above discussed. There are, in addition, affirmative, practically uncontradicted, attempts to at-

tend to her business affairs, which, we submit, not only make a case for the jury, but one so strong that a contrary verdict was impossible.

As above stated, the testimony shows that, up to about the last year of her life, the testatrix had exercised the strictest economy or self-denial, amounting almost to penuriousness, and that, except to the extent of the qualified gift to her nephew in or about the year 1894 (21), she had never been known to invade her principal. In June, 1904, a few days before removing to the Morgans', she got the book-keeper of the B. H. Warner Company to cash one of her notes for $500 (Record, 30), and presented it to Mrs. Morgan as a present "to remember me by," and so Mrs. Morgan would have something if anything should happen to testatrix. The following month, just after the time when the appellant Morgan testifies he found her sitting on the narrow vestibule strip of his house, to which she had retired because she was ashamed to have people see her seated on the steps, and was in the exhausted condition described by him, she got another note of $1,500 cashed (Record, 30), $1,000 of which Mr. and Mrs. Morgan testify was given to the latter, she requiring them to swear "with their hands upon a Testament that they would never reveal the gift" (Record, 65, 72, 82). What became of the remaining $500 of the $1,500 note cashed in July nowhere appears. Mrs. Morgan, it is true, testifies that testatrix sent $400 by her to the Epiphany Church at Easter; but, as the note was not cashed until July, several months after Easter, such gift, if made, could not have been from that source, while the record shows that throughout the following winter and spring the testatrix was making repeated demands on the B. H. Warner Company for sums to meet her actual necessary expenses, Dr. McKim testifying that he can remember no contribution to the church larger than $100, which she gave upon one or two occasions, and $50 upon another, while Miss Gillis (Record, 42) testifies that her contribution was $100 annually. Mrs. Morgan (at page

72) testifies that "she was a very generous-hearted woman, very;" but (at page 82) that she never knew her to give anything to any one except her nephew, Charles H. Adams, and witness, the only gift to her nephew being the conditional loan of 1894 before referred to.

In September, 1904, testatrix requested the book-keeper of the B. H. Warner Company to cash another $1,500 note, (Record, 30), whereupon the book-keeper referred her to Mr. Rheem, an officer of the company, who refused to comply, becoming suspicious that something was wrong, when, upon his refusal, testatrix left without a word; the next morning she came to his office about 8.30, in a very excited condition, thanked him "from the bottom of her heart," and said, "Please don't cash any more notes for me, even if I ask it myself. * * * Those people are robbing me, the people I live with, the Morgans." Being asked why she did not leave them, she answered, "I can't I have been trying to get away from them for a long time." Subsequently she approached Mr. Rheem on the street and whispered to him not to cash any more notes, seeming to be very nervous and excited (Record, 32). The attempt, at page 38 of the brief for plaintiffs in error, to discredit the testimony of the witness Rheem, on the ground that she "got $2,250 in notes cashed" at his office, is doubtless the result of inadvertence in overlooking the fact that Mr. Rheem did not see her on either of those occasions, and that on the first occasion he did see her in connection with such an effort, he demonstrated his conviction of her incompetency by refusing to permit her notes to be cashed, notwithstanding her personal pressure and request at the time.

Several payments were made to the testatrix in June, 1904, the total amount which came into her hands in that month and July, unaccounted for except as to the $1,590 admitted by the Morgans to have been received by them, being $2,358.72 (Record, 32-33).

In October, 1904, Mrs. Morgan having that month presented to the Washington Loan and Trust Company an order from testatrix for the contents of the safe-deposit box of the testatrix, which she had kept there for thirteen years (Record, 28), went to the office of the B. H. Warner Company with some of the notes, which she asked Mr. Rheem to cash, and which he declined to do. The same month she again presented herself with a power of attorney, authorizing her to collect the proceeds of a note belonging to the testatrix, which Mr. Rheem again declined to recognize, and from that time refused to do more than to make a liberal allowance for the support of Miss Adams, on the advice of his counsel, who told him that, if he did not, lunacy proceedings against the testatrix would be necessary, which would be painful and distressing to her (Record, p. 35). His action, under these circumstances, in thus allowing for her support, is treated at page 41 of the opposing brief, as evidence that he honored her drafts and "transacted the customary business with her," and, therefore, regarded her as competent. Instead of living upon the interest of her principal as theretofore, which would have been at the rate of about $50 per month, she continued from that time on to draw, never less than $100, and some times as much as $200 per month (Record, 32-33), during a period when she had no nurses except the Morgans, was able to eat only liquid food, and when her medical bills (Record, 59) from July to December were only $33, there being no other medical bills up to her death, in the following June.

That these advances by Mr. Rheem were liberal to the extent of being excessive, perhaps indefensibly so, must be conceded; but that fact does not strengthen the case of Mrs. Morgan, who received the money, and who, although under contract to board and lodge the testatrix for $35 per month, and although the latter was practically confined to her room at the time the advances were largest, at no cost for nursing, with physicians' bills, amounting in all to less than $20, and

with no other known expenses or disbursements, utterly fails to explain how or when this money went, other than to admit that, out of it, she herself received gifts of various sums, varying from $5 to $50 at a time, their aggregate not being stated.

With respect to the circumstance of the testatrix having become lost on the streets on one or more occasions, Mrs. Morgan testifies that she simply mistook a Connecticut Avenue car for an Eleventh Street car at 9th and F streets (Record, 76). On the other hand, Mrs. Doan testifies Mrs. Morgan told her testatrix had started to go to the B. H. Warner Company, was gone so long that Mrs. Morgan became uneasy, started to hunt for her, got her husband to join in the search, and said to the witness, "Isn't it singular she should take a car and go way out to Mt. Pleasant, any one as familiar with this city as she has been? * * * It shows she is forgetting where she is."

Mrs. Lehman testifies that Mrs. Morgan called at her office, 12th and F streets, telling her Miss Adams had left home, that she had been at several places searching for her, that she could not find her, that she was very much worried and feared testatrix would get lost, and that she was going to try again to find her at the Treasury Department (Record, 85).

Mr. Rheem testifies that Mrs. Morgan came to the Warner building, inquired if he knew where Miss Adams was, told him she had gotten lost before and was found at the 11th Street car barn; that she had gotten away and Mrs. Morgan was afraid she was lost, and that several days before she had gotten lost, and that they had found her at the end of the 11th Street car line, this occurring on May 4, 1905.

Other testimony, practically undisputed, as to the actual acts of the testatrix, of similar tendency, is contained in the record, which it is not conceived necessary to protract this brief by detailing. Still others will be presented in connection with the question as to the evidence of undue influence. That, together, they constitute, at the very least, a *prima*

facie case of mental incapacity, we submit cannot require to be argued.

II.

The second question, raised by the caveatees' exception to the court's refusal to grant their 13th instruction (Record, 88) is: Was there sufficient evidence to go to the jury upon the question of undue influence?

If we are correct in the foregoing proposition, that the case was properly submitted to the jury on the question of the mental incapacity of the testatrix, that issue, having been found adversely to the will, renders discussion of the other questions in the case superfluous. The jury having found the testatrix of unsound mind, incapable of executing a valid deed or contract, the judgment below denying probate was correct, and ends the litigation, irrespective of any question as to undue influence. The will being invalid for all purposes, for want of testamentary capacity to make it, it is wholly immaterial whether it is also invalid for undue influence. Under the law, which exacts no vain or useless thing, it is not required that a *venire de novo* should be ordered to inquire, at great expense and delay, and the consumption of much valuable time of the court, concerning an issue which has thus become unimportant.

That the supposed insufficiency of the evidence in law to support the finding of the jury upon the question of undue influence cannot invalidate their finding upon the issue of mental incapacity is plain upon principle, and is believed to be unquestioned under the authorities. Even where all of several issues must be found in favor of one of the parties to entitle him to a verdict, and, as to some of them, there was error, only the latter will be resubmitted, the verdict standing as to the findings unaffected by such error (Lambert *vs.* Fogg, 49 N. H., 310; Lisbon *vs.* Lyman, 49 N. H., 553, 582; Wood *vs.* Wood, 52 N. H., 422). *A fortiori,* where the valid finding is of itself sufficient to support the judgment, a

venire de novo will not be awarded as to other issues, which thus become immaterial (White *vs* Bailey, 14 Conn., 272; Lively *vs.* Ball, 2 B. Mon., 53; Brown *vs.* Brown, 32 Md., 103; White *vs.* Bailey, 10 Mich., 155; Wallace *vs.* Barlow, 3 Bibb., 168).

At page 21 of the brief for plaintiffs, it is claimed that the alleged error under consideration was not harmless, on the ground that the trial court, in a part of its charge, told the jury that, where a testator is of robust body and strong mind, greater evidence is required to show undue influence than where the body and mind are weak, and that, therefore, in order to show undue influence, the mind and the influence are to be measured together—from which it is urged that the jury *may have* supposed that a similar measuring together of mind and influence was also to be made under the issue as to mental capacity. If the plaintiffs in error, or their counsel, apprehended such a danger from the charge, they should have asked a proper instruction in regard to it, or they should at least have invited attention to it to the extent of excepting to the charge. They did neither.

The further allegation of injury, in that the verdict upon the second issue holds plaintiffs out to the world as having by undue influence procured the execution of a will in their own favor, it can hardly be claimed is of a character to afford jurisdiction to entertain a writ of error, especially where a new trial and a different verdict upon the issue in question could in no wise change the judgment sought to be reversed; while, as to costs, the only remaining ground of alleged error, it is not and cannot be shown to approximate even, the amount necessary to give jurisdiction to this court, if questions as to costs were appealable. With respect to costs in the probate court of the District of Columbia, the power of that court is discretionary and exclusive, its judgment final, and no appeal lies therefrom (Tuohy *vs.* Hanlon, 18 D. C. App., 225, 230).

Proceeding, however, to the question whether the court erred in declining to exclude the question of undue influence from the jury under the evidence in the case, it will be noted, in the first place, that we are dealing with the case of a mentally weak and incompetent testatrix, as to which class of cases the law is well settled that a less degree of proof is required to support a verdict of undue influence than in the case of persons of sound mind; and, in the second place, that undue influence is "nearly always a matter of inference from facts and circumstances disclosed by the evidence of the conditions and surroundings of the parties, and cannot, in its legal sense, be defined and applied in one case so as to present a correct measure for the determination of another. * * * 'Undue influence, coercion, fraud and the like naturally and ordinarily are not susceptible of direct proof, but must be inferred from circumstances. Undue influence is generally proved by a number of facts, each of which, standing alone, may be of little weight, but, taken collectively, may satisfy a rational mind of its existence' (Moore *vs.* McDonald, 68 Md., 321, 329). In such a case, too, much must be left to the sound discretion of the trial judge" (Olmstead *vs.* Webb, 5 D. C. App., 38; Barbour *vs.* Moore, 10 D. C. App., 30).

Mrs. Van Wickle, who visited the testatrix in February or March, 1905, testified more fully than appears at page 15 of plaintiffs' brief, that she was very much worried and excited, undertook to talk to witness about her money or business affairs, but was constantly interrupted by the entry and re-entry of Mrs. Morgan into the room, without apparent necessity or cause, when she would invariably discontinue the subject and talk of something else (Record, 27).

Mrs. Carmick (Record, 29, 30) describes her as being very weak and feeble in February, 1905, "when she seemed to be mentally incapacitated in every way and perfectly dependent;" and that testatrix said when she got to the home of the Morgans she found a large arrearage for rent on both the house and the store, and that she had to pay up that

arrearage for fear of having to move again or be homeless. As far back as September, 1904, she told Mr. Rheem (Record, 34) "Those people are robbing me, the people I live with, the Morgans," and that she had been trying to get away for a long time, but could not do so, Mr. Rheem's testimony being that she was very much excited and agitated about it. When Mrs. Morgan, in October, endeavored to have Mr. Rheem cash certain securities belonging to the testatrix, and he had gone to the house to inquire from Miss Adams herself about the matter, he was told by Mrs. Morgan that she was too ill to be seen, and that the doctor had forbidden her seeing persons (Record, 33), yet Mrs. Morgan testified that on that occasion, when Miss Adams saw Mr. Rheem coming, she "ran out of the room like a sixteen-year-old girl" (Record, 78), while the physician (Record, 59), contrary to what appears at p. 15 of the opposing brief, testifies that he had never forbidden the testatrix to see Mr. Rheem until after he was told Mr. Rheem had already been there. On being denied opportunity to see Miss Adams, Mr. Rheem, who is criticized at pp. 40-1 of the brief for not communicating with the nephew, asked Mrs. Morgan (Record, 33) to give him the name of testatrix's closest relative, the nephew, who was the nearest relative, which she declined to do, first stating, contrary to the fact, that she did not have it, and, when he asked her to get it from Miss Adams, stating that the latter did not wish him to write to her nephew. Subsequently, by a leading question, which the testatrix answered by simply repeating its phraseology (Record, 35), Mrs. Morgan led her to say, herself introducing the subject, that she did not wish him to communicate with her nephew. When desiring to send a trifling present to a friend, she asked Mrs. Scott to take it to her, "but not to let Mrs. Morgan see it" (Record, 37), and repeated this to Miss Sewall (Record, 38). She complained to Miss Mann that Mrs. Morgan cried and teased her so to come to her house that she went there in order that her board and

room might help them; that Mrs. Morgan kept coming night after night and teasing her, until testatrix gave way; that she was sorry for it; that Mrs. Morgan (Record, 38) misused her, did not give her what she could eat—"they have gotten my money and I cannot get away," her manner being depressed and not like her old self.

Mr. Morgan (Record, 65-66) testified that in October, 1904, the testatrix asked him to get a will prepared for her by his attorney, but that he, Morgan, insisted upon her employing her own attorney, and went to Mr. Lichliter, the attorney in question, for the purpose; that he insisted upon her employing Mr. Lichliter because he was competent, and because it was "*his* idea that the one who had been attending to it should continue to do so," and he insisted that she should get her own lawyer, because *he* did not think it necessary for her to change.

Mr. Lichliter (Record, 48, 50) testifies that Mr. Morgan brought him a memorandum for the will, which was not in the handwriting of Miss Adams, and which memorandum Mrs. Morgan finally concedes (Record, 73-74) was written by her, this being the will which gave Mr. and Mrs. Morgan $1,000 each, and divided the rest of the estate equally between the niece and nephews, the origin of which will, evidently made at the suggestion of Mrs. Morgan, is shown by her testimony at page 73.

Coming to the testimony of Dr. McKim, before cited, the will of February, 1905, was executed to supersede the Lichliter, or October will, because Dr. McKim explained to the testatrix that, in the latter, the legacies to Mr. and Mrs. Morgan was not for their lives, as she declared she intended them to be, and because of his suggestion that she leave something to the church. Mr. Morgan testifies the later, or February will, was made because she wished him to be sole executor, so that he would not have to divide commissions with Mr. Lichliter, as under the October will; that, this time, claiming it was because of her insistence, he got his own attorney,

who was entirely unknown to Miss Adams, to prepare the will; that he took a memorandum down to the attorney's office, all the "essential parts" of which were written by her; that he, Mr. Morgan, went over the will with his attorney after it was prepared, assisting him in comparing it with the memoranda; that he knew generally all that was in the will, and that he went over it with his attorney (Record, 65-66).

Directly to the specific question, propounded by his own counsel, what influence he exerted or attempted to exert upon Miss Adams in making the will in his favor, he answered, "When she was with us, he always tried to do the best he could for her; that they nursed her and often sat up all night, or he one-half of the night and his wife the other; that when she did not need any one to sit up with her they were always on the alert, and that he never had any conversation with the deceased other than he had already stated." Such an answer, to such a question, we submit, is significant, especially in connection with the mental condition and temperament of the testatrix, as given by Judge Doan and other witnesses: "If you humored her, she was all right; she would do almost anything. In that way you could get her to do almost anything" (Record, 25).

Mrs. Morgan testified that testatrix told her she was " 'going to make another will, and remember the church, because Dr. McKim had suggested it,' and said, also, 'I am going to do better by you, dearie.' " When Mr. Morgan's attorney and his assistant went to the Morgan home, they were "ushered into the room of Miss Adams and introduced to her by Mrs. Morgan;" the latter sent out for a dentist to be one of the witnesses; they waited for him about 15 minutes, after which a Miss Hicks was substituted for the dentist. Throughout the period of her sojourn in their house, Mrs. Morgan testifies "there was no one to look after the deceased except herself and husband, upon whom the deceased depended entirely for attention until six days before her death" (Record, 49), and that she, Mrs. Morgan, was "both trained nurse and a private secretary to her" (Record, 76). Testi-

mony was offered on behalf of the caveatees as explaining the disinheriting of the niece and one of the nephews of the testatrix, that she cared nothing for those relatives and had always stated they should have none of her property; yet the testimony shows that she never went to Connecticut without calling upon the niece; that the only difficulty between them was a trifling one, which had occurred fifteen years before her death; that she presented her nephew Frank W. Adams with a gold watch and chain during the last year of her life; that she wrote affectionately of him (Record, 41), and that in the October will she had divided her residuary estate equally among the three, share and share alike.

In June, 1904, in departure from the habits and characteristics of a lifetime, she gave $500 of her hard-earned, scanty principal to Mrs. Morgan, no attempt being made to assign a cause or reason for such a gift. In July, before she had been a month in the home of the Morgans, another gift—of $1,000 this time—is obtained from her, with $500 more of her principal withdrawn from the hands of the B. H. Warner Company and wholly unaccounted for, her condition of weakness and debility at that time being as shown by Mrs. Morgan's letter of July 14, 1904, at page 97 of the record. In September, she attempts to withdraw $1,500 more of her principal, and her agents refusing to let her have the money, she thanks them profusely, declares the Morgans are robbing her, and entreats them never to give her any more of her principal, even if she asks for it in person. A few days later, October 7, Mrs. Morgan, by an order in her own handwriting, signed by Miss Adams, withdraws from the safe-deposit box of the latter all her securities, which she had left there for thirteen years, takes them to her home, where they are kept in a trunk, after which she, Mrs. Morgan, presents them to Mr. Rheem, asking him, upon the alleged authority of the testatrix, to collect them all, and also to cash $1,500 of them (Record, 80), which he declines to do. The following month, she again presents herself at the offices of the B. H. Warner Company,

this time with a power of attorney drawn up by a notary procured for the purpose by her husband, to receive the proceeds of all of Miss Adams' securities, and, this being denied her, she and her husband go together in quest of the notary, and, not finding him, Mrs. Morgan writes the letter of November 28, 1904, printed at page 31 of the record, and sends it, with Miss Adams' signature, asking the principal of the Blundon notes, $800 in amount (Record 10), to pay "two large doctor's bills," etc., the amount of her physicians' bills at that time being $19 (Record, 59), and no attempt being made to show either that she owed any other debts at that time, or could have done so, the sums drawn by Mrs. Morgan, ostensibly for her support, ranging from $100 to $200 per month, their contract being to lodge and board her for $35 per month, and no expenses of any kind being shown to account for the disposition of these large monthly withdrawals except that Miss Adams made from time to time other pecuniary gifts, in varying sums, to Mrs. Morgan (Record, 65, 72). Upon Mr. Rheem finally obtaining an interview with testatrix, she told him that she did not wish the proceeds of the Blundon note, but desired all her money to be invested, Mrs. Morgan, who was present, saying: "Well, that is the way with Aunt Julia; she changes her mind; she never knows what she wants to do from one time to another" (Record, p. 34). Asked why, in Miss Adams' sick and enfeebled condition, the securities were taken from the safe-deposit box where she had kept them when in health and strength, Mrs. Morgan at first testified that it was because the notes matured at different times, and Miss Adams could not tell when they would mature; and, on further inquiry why a list, showing their times of maturity, was not made out, and the securities themselves left where they would be safe, she answered that the testatrix "wanted to peruse the notes" (Record, 81); that Mrs. Morgan suggested to her that she could take the securities back and replace them in the box when she got well, and she agreed to this, and that Mrs. Morgan made this suggestion "to comfort her." The

contradictory statement that she wished to get possession of her securities because she feared the Swartzell, Rheem and Hensey Co. might result in a failure similar to Waggaman's is antagonized by the fact that her securities were never in the possession of that company, being kept in her own box in the vault of the Washington Loan & Trust Company, to which she alone had access, their safety being diminished, instead of being increased, by their withdrawal (Record, 72).

Mrs. Morgan and her husband would talk to each other about his "dull business season" (and see at page 30), in the room of testatrix, who would listen and take a great interest in it, and would mention it afterwards (Record, 81); she was very kind-hearted and sympathetic, and if she could relieve anybody she was interested in, she would give them money, but would not give you money if you asked her for it (Record, 82)—the only person she was ever known to give money to, except her nephew Charles Adams, being Mrs. Morgan herself (Record, 82), and the only gift to Charles being the $1,000 loaned him upon mortgage in 1894, and not required subsequently to be repaid.

Under the authorities above cited as to the manner in which undue influence is to be proven, the extent to which the mental condition of the deceased at the time enters into that question, and the discretion properly allowable to the trial justice, who has the superior advantage of seeing the witnesses and observing their bearing, deportment, and manner of testifying, it is respectfully submitted that the court did not err in leaving the question of undue influence to the jury, under the facts and circumstances of the case. Indeed, the case was stronger for submission, we submit, than either that of Moore *vs.* Barbour or Olmstead *vs.* Webb, cited *supra*, or than is usually capable of being proven in like cases, in view of the character of the mental weakness and incapacity of the testatrix and the testimony as to the influence and control of the caveatees over her as shown by the testimony.

III.

The appellants' third exception (Record, 88) is to the refusal of the trial court to instruct the jury, as a matter of law, that the testimony of the appellants established by a fair preponderance of the evidence that undue influence was not exerted, and to direct a verdict upon that issue in their favor.

Since the credibility of witnesses and the weight to be given to their testimony are exclusively questions for the jury, it must be unnecessary to discuss this exception at any length. Even where the testimony of a witness is to a specific point, and is uncontradicted by any other witness, the weight to be given it is a question for the jury, and the court cannot be required to instruct them to accept it as true (Davis *vs.* Coblens, 174 U. S., 719).

IV.

The remaining question is: Was it error to instruct the jury that, if the testatrix was an inmate of the home of the appellants at the time of the execution of the will, was of advanced age and frail and feeble health, requiring much care, nursing and attendance, for which she was dependent upon them, as also for aid in and attention to her business affairs, and that they were active in respect to or connected with the preparation of the will, in which they were the principal beneficiaries, the burden of proof was upon them to show by a fair preponderance of the evidence that its execution was not procured by undue influence?

This question, like the two preceding, is rendered wholly immaterial by the finding of the jury that the testatrix was of unsound mind, incapable of making a valid deed or contract. The appeal is, not from the findings of the jury, but from the judgment of the court denying probate; and this judgment, so far from being erroneous, was inevitable under

the finding of the jury on the question of mental incapacity alone, regardless of the other issues in the case.

Though error exists, a judgment will not be reversed, if correct notwithstanding such error (Glenn *vs.* Sumner, 132 U. S., 152, 157; West *vs.* Camden, 135 U. S., 507, 521; Landes *vs.* Brant, 10 How., 348, 375; Evans *vs.* Pike, 118 U. S., 241, 250).

That the instruction was not erroneous, however, we submit, is clear.

It was not claimed below that there was not evidence sufficient to go to the jury upon the hypotheses of fact embraced in the instruction, nor, as will appear from the summary of the evidence upon this point under the preceding head, could there have been any question upon this point.

The claim here, that Mrs. Morgan rendered no aid or attention to the testatrix in her business affairs except to write letters for her as an amanuensis, is made in forgetfulness of the fact that it was she who withdrew all the securities from the safe-deposit box, tried to collect them from the Swartzell, Rheem & Hensey Company, and did collect all the monthly allowances for her support, so that for nearly all the latter part of her life every dollar provided for her maintenance passed through Mrs. Morgan's hands. As to Mr. Morgan, his own testimony as to the part he assumed to take in the making of the two wills sufficiently demonstrates the relation he bore to her affairs.

"Where it appears from the evidence that the testator and beneficiary stood in confidential relations towards each other, and it also appears that the legatee, whether the legal or medical adviser of the testator, or the financial manager of his property, was the draftsman of the will, or that he procured the services of the draftsman and superintended the execution of the will, or gave instructions or made suggestions for drafting it, circumstances are shown from which a presumption of undue influence or fraud arises which the proponent of the will has the burden of proof to overthrow, and to show that the will was the free, voluntary act of the testator" (Underhill on Wills, sec. 145 and citations).

"The testatrix at the time of making the will was of very advanced age, certainly not less than 86. She was an inmate of the house of Mr. Goodrich, who was her medical attendant, and the will and codicils give the bulk of the property to him, who was no relation of the testatrix. The will was made by Mr. Lane, a stranger to the testatrix, and the solicitor of Mr. Goodrich. Now all these circumstances awaken the vigilance of the court and require that the proof shall be full and satisfactory. The *onus probandi* is upon those who set up the testamentary instrument; and, when facts like these appear, the evidence to support the affirmative must be stronger than in ordinary cases" (Jones *vs.* Goodrich, 5 Mood. P. C., 16).

"Take all the circumstances together—the fiduciary relation, the change of testamentary intention, the age and mental and physical condition of the decedent, the fact that the proponent was the draftsman and the principal beneficiary under the will, and took an active part in procuring its execution, and that the testatrix acted without independent advice, and a case was made which required explanation, and which imposed upon the proponent the burden of satisfying the court that the will was the free, untrammeled and intelligent expression of the wishes and intention of the testatrix" (*In re* Will of Smith, 95 N. Y., 516, 522-3).

"The existence of fiduciary relations between the testator and the principal or large beneficiary of the will, coupled with activity on the part of the latter in or about the execution of the will, such as the initiation of proceedings in regard to its preparation, or participation in such preparation, employing the draftsman, or selecting the witnesses, etc., raise a presumption of undue influence, and cast upon the beneficiary the burden of showing that the will was not induced by undue influence, coercion or fraud, direct or indirect" (Bancroft *vs.* Otis, 91 Ala., 279, 286, 289, 291).

The Morgans, if not the professional advisers or medical attendants of the testatrix, combined the vocations of her "trained nurse and private secretary;" she was an inmate of their home, was between 80 and 90 years of age, in feeble health, and suffering from great weakness. As to the October will in which they first became legatees, the suggestion that a will could be made, notwithstanding Miss Adams'

physical condition, by having the lawyers come to her, and that he probably would not charge much for doing so, was Mrs. Morgan's (Record, 73); the memoranda for its preparation was written by her, and carried by her husband to the lawyer whom he insisted, against testatrix's wishes, should be employed for the purpose. The will in controversy was prepared by Mr. Morgan's attorney, at his request and from data carried to him by Mr. Morgan, the "essential parts" of which, according to his testimony, were written by her, and which his wife testifies it took her a day and a half to write, although the will differs from the preceding will only in the four particulars, that it increases the Morgans' legacies, disinherits the niece and one of the nephews in their favor, gives $250 to the Epiphany Church, and makes Mr. Morgan sole executor. This latter will was made pursuant to conversations testified to by the Morgans as having taken place between them and the testatrix before it was made, to the effect that its object was to give the Morgans all the commissions of the position of executor, which the October will divided with Mr. Lichliter, and to "do better by you, dearie"—*i. e.*, to increase Mrs. Morgan's benefits under it. Mr. Morgan went over the will with his attorney after it was prepared, assisting in comparing it with the memoranda, while Mrs. Morgan introduced the attorney to Miss Adams, and assisted by selecting and sending for the witnesses, etc. The testatrix had no one to look after her except the Morgans, and was entirely dependent upon them for attention until within six days of her death.

The facts, we submit, bring the case clearly within the authorities cited, and abundantly justify the instruction given.

At page 20 of the opposing brief the instruction is mistakenly mentioned as "an instruction to return a verdict against the will" on the issue of undue influence, while at page 22 it is represented as an instruction that "any aid in or attention to her business affairs constitutes confidential re-

lationship." These objections, however, are too clearly the result of misconception to require discussion.

Admitting that the evidence shows the Morgans to have been active with respect to the preparation and execution of the will, the brief (pages 22-3) claims that the instruction was erroneous, in that it did not advise the jury that if, in what they did, they acted upon the free and voluntary instruction of the testatrix, such activity would not constitute undue influence. If the appellants thought such an instruction, or such a modification, was necessary, they should have asked it. Having failed to do so, they cannot be heard, in an appellate court, to complain that it was not given (McDermott *vs.* Severe, 202 U. S., 600, 610-11; Tweed's Case, 16 Wall., 504, 515-516; McNitt *vs.* Turner, 16 Wall., 352, 362; Railway Company *vs.* Ives, 144 U. S., 414-15; Railroad Company *vs.* Horst, 93 U. S., 299, and Wigmore on Evidence, 57). Edington *vs.* U. S., 166 U. S., 361, 365, cited at page 24 of the plaintiffs' brief, is not in conflict with these citations. But, in addition, this criticism of the instruction amounts to no more than a claim that the court should have told the jury that, if the Morgans sustained the burden of proof on the issue of undue influence under the conditions of fact presented in the instruction, those conditions should not be taken as evidence of undue influence.

The only discussion in the brief for appellants affecting the verdict of the jury upon the question of incompetency, which, as pointed out above, is of itself sufficient, and must sustain the judgment if not successfully attacked, is over the question of the weight of evidence under that issue. At page 36 the appellants concede there was some evidence upon the issue of testamentary incapacity on the part of the testatrix, but they deny that such evidence, in contemplation of law, was sufficient to establish the fact of incapacity, when considered either by itself or in conjunction with the caveatees' testimony.

It nowhere appears to be seriously argued in the brief that the testimony on behalf of the caveators upon the question of mental incapacity was insufficient to go to the jury, nor can it be deemed necessary to argue on behalf of the appellees that it was abundantly sufficient for that purpose. The opposing brief is confined, upon this subject, to pointing out supposed inconsistencies in the testimony of the caveators' witnesses, and to contradictions of that testimony furnished by the witnesses for the caveatees. But that a federal appellate court cannot consider any objection based upon the supposed preponderance of the evidence or weight of the testimony has been denied by this court, from its foundation, and is established beyond dispute (Marine Ins. Co. *vs.* Young, 5 Cranch., 187; Barr *vs.* Gratz, 4 Wheat., 213; River Bridge Co. *vs.* Kansas City R. R. Co., 92 U. S., 315; R. R. Co. *vs.* Fraloff, 100 U. S., 24, 31-32; R. R. Co. *vs.* Twombly, 100 U. S., 78; Borgher *vs.* Life Ins. Co., 103 U. S., 90; Wabash R. R. Co. *vs.* McDaniels, 107 U. S., 454, 456). The rule has also been declared by the Court of Appeals of the District of Columbia in R. R. Co. *vs.* Adams, 11 D. C. App., 376, 397; and see Metropolitan R. R. Co. *vs.* Moore, 121 U. S., 558, 573. It is doubtful whether even the transfer to an appellate federal court of the jurisdiction of a tribunal which had the power to grant a new trial on the ground that the verdict was contrary to the weight of evidence could, under the Constitution, confer that right upon the former court (Gleason *vs.* R. R. Co., 1 D. C. App., 185).

It is respectfully submitted that the judgment below was correct and should be affirmed.

J. J. Darlington,
S. Herbert Giesy.
Attorneys for Appellees.

MR. JUSTICE MCKENNA delivered the opinion of the court.

This writ of error brings up for review the judgment of the Court of Appeals of the District of Columbia, confirming the judgment of the Probate Court, entered upon a verdict of a jury upon issues framed under a caveat filed against a paper writing alleged to be the last will and testament of Julia M. Adams. The will was presented for probate by Decatur Morgan, who was named therein as executor, and who, with his wife, Jennie G. Morgan, were the principal legatees therein. Defendants in error, who were respectively nephews and nieces of the deceased, filed a caveat against the probate of the will, alleging the incapacity of the deceased to make a will, and also alleging undue influence and fraud and coercion exercised upon her by the Morgans and other persons. An answer was filed denying the allegations of the caveat, and the following issues were framed for submission to the jury: (1) Was the written paper propounded as the last will and testament of the deceased executed in due form of law? (2) Was the testatrix, at the time of executing the will, of sound and disposing mind? (3) Was it procured by the undue influence of Decatur Morgan or Jennie G. Morgan, or other person or persons? (4) Was it procured by fraud or coercion of either of the Morgans, or other person or persons?

A jury was impannelled to try the issues, and the questions in the case turn upon certain instructions given by the court upon the second and third issues. The other two, that is, the first and fourth issues, were withdrawn by defendants in error. The verdict of the jury was adverse to the plaintiffs in error on the two issues submitted. Judgment was in due course entered, denying the probate of the will, which judgment was affirmed by the Court of Appeals. 29 App. D. C. 198.

A question is presented as to the right of plaintiffs in error to bring the case to this court. Defendants in error contend the amount in dispute is less than the necessary amount to confer jurisdiction. The total value of the estate is $7,394.50, only

$4,144.50 of which are bequeathed to the Morgans, the balance of the estate goes to defendants in error, except $250.00 bequeathed to the Epiphany Church. The matter in dispute, it is hence contended, is nearly $1,000 less than the jurisdictional amount.

A similar question came up in *Overby* v. *Gordon*, 177 U. S. 214. The case was a contest of a will. The plaintiffs in error in this court offered its probate on the ground that the testator was a resident of Georgia when he made the will, not of the District of Columbia, and that his personal estate passed under the laws of Georgia to plaintiffs in error, who were next of kin of the testator. They were unsuccessful in the court below and then brought the case here, and a motion was made to dismiss, because the interests of plaintiffs in error were several and each interest less than five thousand dollars, and that, therefore, the matter in dispute was less than that sum and this court had no jurisdiction. The motion was denied, this court answering that the value of the estate was the matter in dispute. This, however, was put upon the ground that the question in the case was whether an estate valued at nine thousand dollars should pass, as provided in the alleged will, which, in effect, excluded the next of kin, or in the mode provided by the law of the domicil of the decedent for the transmission of an intestate estate. The purpose of the case therefore, was, it was said, not to seek an allotment to them of their interests, but an adjudication that the alleged will was invalid, and that that contention was advanced by virtue of a claim of common title in the next of kin of the decedent in the *corpus* of the estate derived from the alleged law of the domicil of the deceased. In other words, it was held in such case that where parties seek a recovery under the same title and for a common and undivided interest, the sum sought to be recovered, not the share of each individual claimant, constitutes the matter in dispute. And for this see *Shields* v. *Thomas*, 17 How. 3, and *New Orleans & Pacific Railway* v. *Parker*, 143 U. S. 42, 51, 52.

The case at bar is distinctly different. The legacies to the

plaintiffs in error, of course, depend upon the validity of the will. That constituted their common title, but the sum of their interest is only $4,144.50, which is less than the amount necessary to give jurisdiction to this court, nor would the necessary amount be reached if the legacy to the Epiphany Church be added.

Writ of error dismissed.

[End of Volume 211.]

[Per curiam opinions, decisions on petitions for certiorari and list of cases disposed of without consideration by the court will appear in a subsequent volume.]

MORGAN *v.* ADAMS.

ERROR TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

No. 50. Argued December 9, 10, 1908.—Decided January 11, 1909.

Although the estate may amount to more than $5,000, if the aggregate interest of plaintiffs in error is less than that amount, and the balance of the estate goes to defendants in error, the necessary amount in controversy does not exist to give this court jurisdiction of an appeal from a judgment of the Court of Appeals of the District of Columbia setting aside a will. *Overby* v. *Gordon*, 177 U. S. 214, distinguished.
Writ of error to review 29 App. D. C. 198, dismissed.

THE facts are stated in the opinion.

Mr. E. Hilton Jackson for plaintiffs in error.

Mr. J. J. Darlington and *Mr. S. Herbert Giesy* for defendants in error.